S. HRG. 101-166

# REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT

## HEARINGS

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT INFORMATION AND REGULATION

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

MANAGEMENT AND TECHNOLOGY ISSUES
JUNE 12, 1989

PURPOSE, EFFECTIVENESS, AND NEED FOR CHANGES
JUNE 16, 1989

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
19-630 WASHINGTON : 1989

S 401-46

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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# REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT: MANAGEMENT AND TECHNOLOGY ISSUES

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MONDAY, JUNE 12, 1989

U.S. Senate,
Subcommittee on Government
Information and Regulation,
Committee on Governmental Affairs,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room 342, Dirksen Senate Office Building, Hon. Jeff Bingaman (Chairman of the Subcommittee) presiding.

Present: Senator Bingaman.

Staff Present: Edwin S. Jayne, staff director; Carole Hardwick-Schneier, chief clerk; Steven L. Katz, chief counsel; Kenan P. Jarboe, professional staff member; Elizabeth Powell, detailee; Ann Schnittker, secretary; and Rich Ashooh, minority professional staff member.

## OPENING STATEMENT OF SENATOR BINGAMAN

Senator Bingaman. This hearing will come to order.

Today begins the formal process of the consideration of the reauthorization of the Paperwork Reduction Act by this Subcommittee. Reauthorization of the Paperwork Reduction Act occurs at an important time. We have an opportunity to address many issues of Federal information resource management at the outset of a new presidential administration, a new Congress, and the arrival of a new OMB director.

Before asking the witnesses to share their views, I would like to make a few observations about the evolution of the Paperwork Reduction Act and the responsibilities of Congress and the Federal Government in this area.

The Paperwork Reduction Act was enacted by Congress in 1980. It was subsequently reauthorized in 1986 and its current authorization expires on September 30th of this year. The important goals of the Act are undisputed. We must recognize the wisdom, diligence and bipartisan support which led to its creation and its subsequent reauthorization.

Special credit goes to Senators Lawton Chiles, Carl Levin, Bill Roth, David Durenberger, Representatives Jack Brooks and Frank Horton, and many others.

The Paperwork Reduction Act was a milestone in responding to pressing matters involving Government information. The burden of paperwork in today's society, and especially Government paperwork, is enormous and I support those efforts that are underway as part of the Paperwork Act to reduce the burden.

I found the original Act and its 1986 amendments to be far-reaching and far-sighted in their goals and purposes. I am struck by its relevance to our Government and society and in addition to reducing Government paperwork, this includes such valuable principles as reducing Government paperwork burdens, strengthening cost management of information collection and dissemination, and assisting agencies in information policy planning.

Obviously, we support the continuation of those goals, but we must also be ready to take advantage of the opportunity that is created by the need to reauthorize and to address new areas that may not be fully covered by the Act. Areas in which I have had a special interest in reviewing include improving the quality and uses of Federal information, public participation and awareness of OMB decision-making, and the scope of the OMB regulatory review.

I hope we can explore further the goals of the original Act and the 1986 amendments in this area, as well as how these provisions have been carried out. We are living in an economy and in a society that has gone through major changes in the past two or three decades.

Ours has been called the "Age of Information." In this information age, the laws and activities governing Federal information policy have become increasingly important to the effective and efficient operation of Government and its impact on the American public.

On a broader plane, I believe there is an obligation on the part of the Federal Government to maintain an informed electorate and we need to explore the proper role of the Government in dissemination of electronic, as well as printed Government information.

Without question, Government information is a valuable public resource. The Nation needs accurate information about its population, its economy and society. It ensures that the Government's accountability to the Nation serves as an essential tool for Government planning and management. It is also a valuable commodity in the economic marketplace.

More importantly, however, cost management of Government information and related policies must not serve to undercut the value of information to the enforcement of our Nation's laws and the research and evaluation of Government operations.

In addition to the fundamental issue of reauthorization, there are a number of other issues confronting the Congress at this time related to the Paperwork Reduction Act which we are interested in and I hope that these hearings will address those issues as well.

These include the effectiveness of OIRA, the Office of Information and Regulatory Affairs, the management of information resources, the regulatory review functions of OIRA, paperwork review effectiveness in the modernization of information technologies.

Lastly, these hearings are being supplemented by the efforts of my staff and myself to meet with all those interested in the issues before us at this time. I want to thank those of you who have taken the time and energy to educate us so far, and encourage those others to reach us as soon as possible.

Let me also say, we are approaching reauthorization in the most objective way possible and we will address those issues that are brought to us as best we can. Again, I look forward to the help of all interested parties and I will look forward to the testimony of our witnesses.

[The prepared statement of Senator Bingaman follows:]

### PREPARED STATEMENT OF SENATOR BINGAMAN

This hearing will come to order.

Today begins the formal process of the consideration of the reauthorization of the Paperwork Reduction Act by this Subcommittee. Reauthorization of the Paperwork Reduction Act occurs at an important time. We have the opportunity to address the many issues of Federal information resources management at the outset of a new presidential administration, a new Congress, and the arrival of a new OMB Director.

We have 2 days of hearings scheduled on this subject at this time, today's hearing and one scheduled for Friday, June 16, 1989. The Subcommittee will discuss the need to reauthorize the Paperwork Reduction Act by examining the technology and management issues in the first day of hearings, and will follow with a second day of hearings which examines the purpose, effectiveness, and possible reforms of the Act.

Today, our first panel will discuss the advent of the information age and the Federal Government's ability to keep pace with it. The second panel will address the growth of information technology, computerized information access and dissemination, the debate over privatization of information and private management of government databases, and new technological developments. The third panel will present the perspectives of a select group of Federal agencies concerning their responsibilities under the Paperwork Reduction Act, including: information collection and management; statistical policy; internal records management; information dissemination; and information technology procurement coordination and planning.

Before asking the witnesses to share their views with us, allow me to make a few observations about the evolution of the Paperwork Reduction Act, and the responsibilities of Congress and the Federal Government today and in the future.

The Paperwork Reduction Act was enacted by Congress in 1980. It was subsequently reauthorized in 1986 and its current authorization expires on September 30, 1989. The important goals of the Act are undisputed. We must recognize the wisdom, diligence, and bipartisan support which led to its creation and subsequent reauthorization. Special credit goes to Senators Lawton Chiles, Carl Levin, William Roth, David Durenberger and Representatives Jack Brooks, Frank Horton, and others.

According to the March 22, 1989 CRS report for Congress by Stephanie Smith, entitled "Paperwork Management in the Federal Government:" [1]

> In 1980, Congress enacted the Paperwork Reduction Act in response to growing concern over the ever increasing amount of Federal paperwork requirements being imposed on the public. Passage of the Act reflected a desire by Congress to more clearly define the oversight responsibilities of the Office of Management and Budget (OMB) as they related to the reporting requirements of Federal agencies. OMB's Office of Information and Regulatory affairs (OIRA) was authorized by the Act to develop and administer uniform information policies in order to facilitate the availability and accuracy of agency data collection practices.

I commend this report to others attention and ask it to be made a part of our hearing record.

The Paperwork Act was a milestone in responding to pressing, matters involving government information. The burden of Paperwork in today's society, especially government paperwork is enormous, and I support those efforts that are under way as part of the Paperwork Act to reduce that burden. I have found the original Act and its 1986 amendments to be far-reaching and far-sighted in its goals and purposes. I am struck by its relevance to our government and society. In addition to reducing government paperwork, this includes such valuable principles as reducing the government paperwork burden, strengthening cost management of information collection and dissemination, and assisting agencies in information policy planning. I support the continuation of these goals.

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[1] See p. 597.

We must also be ready to take advantage of the opportunity that is created by the need to reauthorize, and address new areas that may not be fully covered by the Act. Areas in which I have a special interest in reviewing include improving the quality and uses of Federal information, public participation and awareness of OMB decision-making, and the scope of OMB regulatory review. I plan to explore further the goals of the original Act and the 1986 amendments in this area, as well as how these provisions have been carried out.

We are living in an economy and a society that has gone through major changes in the past two or three decades. Ours has been called the "age of information." In this information age, the laws and activities governing Federal information policy have become increasingly important to the effective and efficient operation of the government and its impact on the American public.

On a broader plane, I believe there is an obligation on the part of the Federal Government to maintain an informed electorate and we need to explore the proper role of the government in dissemination of electronic as well as printed government information. Without question, government information is a valuable public resource. The Nation needs accurate information about its population, economy and society. It ensures that the government is accountable to the Nation, serves as an essential tool for government management and planning. It is also a valuable commodity in the economic marketplace. Importantly, however, cost management of government information and related policies must not serve to undercut the value of information to the enforcement of our Nation's laws and the research and evaluation of governmental operations.

In addition to the fundamental issue of reauthorization there are a number of other issues confronting the Congress at this time relative to the PRA which we are interested in and I hope these hearings will address those issues as well. Such issues include the effectiveness of OIRA; the management of information resources; the regulatory review functions of OIRA; paperwork review effectiveness; and the modernization of information technologies.

Lastly, these hearings are being supplemented by the efforts of my staff and myself to meet with all of those interested in the issues before us at this time. Let me thank those of you who have taken the time and the energy to educate us so far, and encourage those others to reach us as soon as possible. Let me also say that we are approaching reauthorization in the most objective way we know how and we will address those issues that are brought to us as best we can.

Again, I look forward to the help of all interested parties and I look forward to the testimony of our witnesses.

I would now like to call our first panel of witnesses, Mr. John Diebold, Chairman of the Diebold Group, and Mr. Ralph Carlone of the General Accounting Office.

Senator BINGAMAN. I would now like to call the first panel of witnesses—Mr. John Diebold, who is the Chairman of the Diebold Group, and Mr. Ralph Carlone of the General Accounting Office. Will you please take a seat at the table.

Mr. John Diebold is Chairman of the Diebold Group in New York and an internationally-recognized leader in the area of management and technology. His book, "Automation," which was first published in 1952, is considered a management classic. Mr. Carlone is Assistant Comptroller General for Information Management and Technology within the General Accounting Office. Why don't we start with you, Mr. Diebold. Thank you very much for being here today.

## TESTIMONY OF JOHN DIEBOLD, CHAIRMAN, THE DIEBOLD GROUP, INC., NEW YORK, NY [1]

Mr. DIEBOLD. I have been asked to comment on three areas: the nature of the information revolution and where it is going; the implications for the Federal Government with particular reference to the opportunities to use the technology; and to aid in the development of the technology. I will make brief opening comments on each of these three areas.

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[1] See p. 99 for Mr. Diebold's prepared statement.

The development of information technology should not be viewed as the invention of a single machine—the computer—but rather as two developments, both occurring in the late 1930's, early 1940's. One, a series of insights into the nature of information, theory and the ability to think about information in abstract terms.

A very small number of people—John von Neumann at the Institute for Advanced Study in Princeton; Allan Turing in Cambridge in England; Norbert Wiener at MIT; Claude Shannon, Bell Telephone Laboratories—a few people developed very powerful insights into the nature of information.

At the same moment, the emergence of electronics in World War II gave us the technology to be able to build information machines to do what we wanted. So it was the coming together of these two developments which are really the heart of this whole information revolution. That is not long ago.

Two of these men—von Neumann and Wiener—were both faculty advisors of my own graduate student work so I think of that as not long ago or at least I think of it in terms of blood and tissue—people.

The technologies have changed continuously. The form in which they have manifested themselves have changed. Today, to think about the future, you have to think about the start and you have to realize that developments in materials, technology, increasingly developments in neurobiology and the way we organize such systems, and gradually other developments in biotechnology, are important to the future. But you have to think about a powerful, continuing decrease in cost, increasing capability, and the ability to build machine systems to do anything that we want in handling information.

Since this is the heart of society, the real determinant of our institutions, they are developments which are changing the very nature of our world. I used the construct 30 years ago and I still find it useful: the first thing that will change is how we do a job; secondly, the job that we are doing; and third, the society and environment in which we are doing the job. All three of those are now beginning to happen.

If we look ahead a bit, the developments of the technology that are most important are the increasing ability of voice communication with the systems and voice response in ordinary human voice; the improved capability of graphics; the ability to handle very high quality pictures, both motion and still, as part of the information system mingled in with data in the numeric and alphabetic form as we are used to seeing it; developments that reduce materially the cost of the communication so that anything that is hooked to this has a continuing decrease in cost. It is not one technology.

In the decade prior to the chip, in the decade of the 1960's, there was a cost reduction equivalent to $10,000 at the beginning of the decade being $10 at the end. That was before the chip and accelerated with the chip.

It is a whole series of technological innovations, not one. That is what makes it possible. You have a family of cost curves, not just one with enormous reductions in cost, which make possible very complex machines, increasingly easy for the human being to use.

Developments that I think will characterize the period we are coming into in the 1990's—are for example, the question of traffic control. Not only air traffic control, but vehicle traffic control on the ground, in the cities and Federal highways.

The Europeans and the Japanese are ahead of us in these areas. They are very important areas in the use of the technology. The increased inter-linking of organizations through electronic data interchange systems in which suppliers, through manufacturers, on through distribution to the consumer are all part of one loop which contains not only the information about products and services, but financial information relating to insurance, through financial transactions, et cetera.

The way in which the Government agencies communicate with citizens and with organizations, the way in which the latter communicate with the Government, in addition to other organizations, are all changing as a result of this inter-meshing.

The impact of this is often quite far removed from what one initially thinks about. Bar codes, for example, are now in one-half of our check-out counters. One of the consequences has already been an enormous shift in advertising budgets—out of advertising by packaged goods companies into specific store—promotion because of the information. They need to know precisely what is being promoted, and what is being bought as a consequence, in what stores.

The consequences are often much farther removed from the technological application than may be thought about in the first instance. So, in thinking about the future, you must focus on a materially changed information environment.

Secondly, the question of Government use of this, I would defer primarily to my colleague from the Comptroller General's office. I would only like to say that it does provide the ability to improve delivery of services, as well as raise a whole series of policy questions relating to the obvious dissemination of information, the way in which information is made available, in a world where people use information very differently than in the past. Obviously, the burden of interface leads to a very important set of policy questions which your Committee is addressing.

Beyond that is use. When you think about the use in programs providing a new kind of infrastructure to the society, which is really what we are talking about, whether the delivery of educational services, whether traffic control—these are areas that are of very great importance in terms of future forums in which the technology allows us to change our methods of behaving.

The policies the Government adopts in regard to all of these are very important. Obviously, this technology is extremely important to international competitiveness. There are many ways in which the Government has, from the beginning of the computer field, been important in fostering the development, which is the third point I was asked to comment on.

Probably the most fundamental way of fostering the development is through the educational system. We are lagging enormously in proper new uses of the technology for the educational process which is an area which can probably contribute greatly to our productivity and the ability of the United States to compete.

The second area of major consequence is the question of our telecommunications policy. Regardless of how good a judge—Judge Greene—is, the idea of having a Federal judge who handled an antitrust case hourly set U.S. telecommunications policy is something that all the rest of the world marvels at.

U.S. telecommunications policy is fundamental to our ability to move into an advanced industrial state and it is fundamental to our productivity. It is something that ought to be addressed by a more organized process in terms of evolving public policy.

It seems to me that if we are going to make use of the technology in areas such as education, it is necessary to create a demand pull for the technology. You cannot just push the technology through and say it is available and let us use it.

You need to create a demand pull, and the demand pull either has to be through model programs or through privatization; as far as I can see—one or the other: Either to unleash private capital for investment with a for-profit objective in this area or to mount programs which provide a means of moving ahead in such areas as air traffic control, where we are suffering very badly, to say nothing of traffic control for ground vehicles.

These are big areas of world need. They are viewed by both the Europeans and the Japanese as major export areas. They are opportunities by whichever society leads, with two advantages. One, the improvement of productivity within one's own society by having an infrastructure of an advanced industrial society; and secondly, by the fact that leadership itself makes possible the development, the maintenance of a lead in the technology, and the development of both software and hardware capabilities. And these may become major export items to other areas.

Government procurement policies are extremely important. The two ways the Government has influenced the development of this field to date have been through research and development expenditures and through procurement policies. The lack of coordinated procurement policies, the lack of any trade-off point, outside of the White House, for the conflicting policies in procurement is an area that might very well be addressed in considering the policy role as to ways to help in the development of the technology.

Thank you very much.

Senator BINGAMAN. Thank you very much. I'll have a few questions, but first let me call on Mr. Carlone to please go through your testimony. We appreciate you being here.

## TESTIMONY OF RALPH V. CARLONE, ASSISTANT COMPTROLLER GENERAL FOR INFORMATION MANAGEMENT AND TECHNOLOGY, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC,[1] ACCOMPANIED BY JACK BROCK, DIRECTOR, GOVERNMENT INFORMATION AND FINANCIAL MANAGEMENT DIVISION, INFORMATION MANAGEMENT AND TECHNOLOGY, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Mr. Carlone. Thank you very much, Mr. Chairman. I would like to introduce my colleague before I start—Mr. Jack Brock, who is our Director of our Government-wide work in Information Management.

I am pleased to participate in the Subcommittee's hearings on the Reauthorization of the Paperwork Reduction Act. At your request, I am focusing my testimony on the utilization of information technology by the Federal Government; specifically, the billions of dollars spent each year by the various agencies to acquire computer technology to help manage their workloads and to more efficiently meet their objectives.

I understand that these hearings will consider in part the oversight and policy role of the Office of Information and Regulatory Affairs in the effective application of information technology.

Our work has centered on agency management in this area and is not focused on OIRA. However, I believe our observations can provide a useful starting point for the Subcommittee's deliberations. Mr. Chairman, the Federal Government, early on, assumed a leadership role in computer technology applications. Yet we find today that this leadership has slipped.

Federal agencies are experiencing massive problems in acquiring and developing the systems necessary to manage Government operations. Over the last four years, we have reviewed dozens of major systems, systems absolutely critical to effective agency operations and have found very little positive to say about how these systems are being developed.

Invariably, these systems do not work as planned, have cost overruns in the millions, and even hundreds of millions of dollars, and are not developed on time. This condition is pervasive throughout the Government.

Defining the problems and underlying causes is not simple, and the solutions will not be simple. This morning I will highlight some of the most significant problems and failures we have seen to date and provide an overview of why, in our judgment, such failures occur and what initial steps can be taken to address them.

In reviewing the problems associated with the application of information technology, we must consider the environment in which the Federal Government operates. Government operations are characterized by long-term projects with short-term budgets and rapid turnover of senior and mid-level managers who often refocus program priorities.

In addition, many Federal systems are massive and/or unique, requiring unusually complex solutions to very singular applications. The Government spends about $20 billion each year on information technology and management, but I would be hard pressed to identify a single mega-dollar systems development project that could be used as a model.

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[1] See p. 111 for Mr. Carlone's prepared statement.

Unfortunately, I can identify many systems that point to a disturbing trend. For example, our recent review of eight automated defense systems essential for effective personnel management, logistics, and financial management identified a pattern of cost growth, schedule delays, performance shortfalls, and evolving requirements that resulted in changes to development and acquisition strategies.

Specifically, cost growth has been massive in these systems. Defense's estimate to develop and deploy the systems doubled from $1 billion to $2 billion with additional cost growth likely. The original completion dates for all but one system have been delayed by 3 to 7 years, and Defense did not consider alternative strategies, such as maximizing the use of existing personnel and payroll systems to avoid duplication and unnecessary expenditures.

Two of the eight systems—Army Civilian Personnel System and Navy Standard Automated Financial System—are in such disarray that development efforts were abandoned. The Navy found it easier to terminate STAFS after spending over $230 million than to risk another $200 million to make the program work.

Navy reported to the Congress that the life cycle costs for STAFS was $184 million, while internal DOD estimates showed an estimated life cycle cost of $843 million—over four times greater than the official estimate.

We also found significant problems with the North American Aerospace Defense Command—NORAD—a $1.3 billion effort to modernize the critical systems that provide timely warning that North America is under air, missile, or space attack. This system has been plagued by mismanagement.

We found that there was no single manager below the Chief of Staff of the Air Force with accountability, responsibility and authority for the modernization effort. Rather, responsibility was fractured among six commands and over 200 directorates, boards, and working groups.

Essentially, in the two systems that we looked at, both systems fall very short of meeting requirements. One system, not only does not meet the requirements, but, if they were to try to install that system today, they could not install it because it is designed to a different wiring standard than what is currently in the mountain. So, essentially, you have two systems that do not meet their initial requirements. One cannot even be installed at this time.

Such problems are not limited to the Defense Establishment. Information processing giants such as the Internal Revenue Service and the Social Security Administration have had particularly disturbing experiences in attempting to modernize their enormous, archaic and overburdened systems.

IRS, for example, has spent over $70 million since 1982 on four major activities to modernize its tax processing system without producing even a clear plan for the modernized system's architecture. Meanwhile, the Agency continues to process tax returns using a system whose design dates back 25 years.

Similarly, our reviews of the Social Security Administration's $517 million modernization program has revealed that individual components of the overall system have many problems.

Why does the Government have problems implementing computer applications? These examples, plus other work which is not cited here, show that agencies across the Government have similar problems in implementing automated information systems. For the most part, these problems are not caused by a lack of regulations, policies or procedures. Rather, we see such problems as having several causes.

Agency needs are not clearly identified, leading to inadequate definition of requirements. Alternative approaches are not considered. Too frequently, agencies seek unique solutions to common application needs. Problems in software development or system configuration are often deferred to the next development phase, rather than being addressed before moving on.

Determinations of system needs and requirements continually change, leading to cost overruns and schedule delays. Top managers and congressional leaders are not always provided with accurate cost and schedule estimates.

Managers frequently are reluctant to make the tough decision to terminate a poor development effort; instead, choosing to throw additional funding at the problem. Program management responsibility changes frequently, and is often poorly defined. Top agency management is not adequately involved in system development.

We recognize that the underlying causes for these system development problems are varied and complex, and will not be easily or quickly corrected. However, the one absolutely critical factor to moving forward is to increase management attention at all levels.

Top agency management must become knowledgeable and involved with the decisions being made to satisfy agency information needs. These managers must support development programs with technically qualified staff and must be willing to take the time to truly articulate information needs and reasonably define the requirements and costs necessary to meet those needs.

Further, agencies need support, encouragement, and oversight. The Paperwork Reduction Act assigns OIRA a significant role in developing policies, in coordinating agency information practices through the review of budget proposals, and in evaluating agency information management practices.

While we have not reviewed how well OIRA is carrying out these responsibilities, effective implementation could clearly provide the Congress and the agencies a good starting point in helping to address the problems the Government is having in developing and modernizing its antiquated systems.

In particular, there are two areas of OIRA's enabling legislation that this Subcommittee may wish to pursue with OIRA officials. The first deals with the mandate for OIRA to evaluate agency management practices and their compliance with OMB policy, principles, standards and guidelines.

Such evaluations could provide a key to understanding why many of the Government's actions to automate systems are having problems and in formulating solutions to these problems. Specifically, the Subcommittee may wish to pursue with OIRA the extent of these evaluations and its strategy for using evaluations of individual agency systems to identify systemic weaknesses in the Government's process for developing automated information systems.

In addition, it is important that the Subcommittee not only gain an understanding of the extent and nature of these evaluations, but also of the ability of OIRA to effectively carry out this legislative mandate.

Second, the Subcommittee may wish to pursue how well OIRA is accomplishing its mandate of coordinating, through the review of budget proposals, agency information practices, especially as they relate to the development of automated systems.

While effective implementation of these mandates should help in identifying problems and potential solutions, it is important to note that, in the final analysis, management responsibility and accountability for developing information systems must reside with the Agency where the information needs exist and where the systems to meet those needs are being developed.

The Congress can also play an increased role. Hearings such as this serve notice that effective management of information resources is a congressional priority. Agency oversight committees and the appropriation committees need to continue to both challenge and support the actions of individual agencies to more effectively manage information resources and to assure that massive system development activities do not come untracked.

Finally, we need to take better advantage of the rapidly developing information skills and applications outside the Federal Government. I believe we can learn a lot from the private sector experience in large system development and application in how to better integrate information management into overall management operations.

That concludes my statement, Mr. Chairman, and I will be happy to respond to any questions.

Senator **Bingaman**. Thank you very much.

I will start by asking a few questions of Mr. Diebold. You indicate two areas where the Federal Government has the biggest impact in this issue. First, research and development expenditures for the development of new technologies and application of those technologies; and second, in its procurement policies.

In the area of procurement policies, is there any Federal Government procurement policy that you are aware of that effectively moves us toward the development of new technologies and the application of them in a useful way, and deals with some of the problems Mr. Carlone has identified?

Mr. **Diebold**. I think that the policies, to the extent I understand them—and I would defer to the Comptroller on this—have been primarily to focus on getting the lowest cost equipment initially at purchase, now shifting more toward a focus on life cycle.

The question I would raise is whether this is coordinated at all or if there is any attempt to coordinate this—I do not believe there is—with our objective in specific areas—let me use the example of super computers. This is an area where we have a leading position, but where the Japanese are catching up quite rapidly and where there is a major Japanese thrust.

It is my understanding that the portion of Control Data that was closed down a few weeks ago produced super computers; all of the people were let go in this area, which decreased by one and left an already very, very small number of U.S. producers in this area. That could have been an LBO, using private capital, and it would have been possible to keep those engineers and scientists together had they had five firm orders for computers.

I do not know how many super computers are bought each year by the Federal Government, certainly a sizeable number. This gets on very iffy ground because—Alexander Hamilton had problems in his report on manufacturers to this organization, to the Congress, in 1791, in which he was concerned that we have support for U.S. production and the question being, should we not have free trade? The arguments are that if all countries had free trade, it would be better; his counter was, but they do not.

We criticize other countries for using Government procurement to help their domestic industries. On the other hand, they all do. The question I am posing is whether, in some of the areas where, on the one hand, we are expending funds through NSF and DOD expenditures to try to maintain a strong position in areas such as super computers, whether one might look at procurement policy across the Government and compare this with some of our national objectives and whether there might not be advantage to us in such a coordination.

My guess is that there would be. The danger is that one could perpetuate obsolete positions. The danger is always there of trying to use procurement policy to achieve other objectives. On the other hand, I do not see any position of coordination within the Federal Government for this outside of the White House, and it is obviously not something that you can have the White House respond to on each purchase.

So, I believe and have incorporated in my formal statement a suggestion that that be focused on—the question of might there not be a point of coordination on this.

Senator **Bingaman**. On the sujbect of the personnel that we are expecting to implement and use some of these complex information management systems: Is there a ready supply of people with this capability? Are there things the Federal Government should be doing to concern itself with that? Is there an availability of people who are in the area of information resource management who can take on this problem, not just in one agency, but perhaps have enough expertise that they can be a resource to other parts of the Federal Government as well?

Mr. **Diebold**. I am not qualified to respond in terms of the Federal Government's position on that. I think that as a Nation, we certainly need to improve the use of computers within our educational system and part of that is to be sure that we have done more to train people in their use.

The Japanese, for example, have exactly the same number of super computers installed in their school system as we do. They have one-sixth the number of students.

Senator **Bingaman**. Mr. Carlone, in your comments, you indicate that you have essentially not focused on what OIRA has been doing, but focused on the practical problems of getting these systems up and running efficiently throughout the Federal Government, and without exception, you found major problems.

Mr. CARLONE. Yes, sir.

Senator BINGAMAN. How realistic is it to expect a central office to help deal with those problems? What do you see that could be done at a central office like OIRA, which could avoid some of the difficulties that you have identified?

Mr. CARLONE. I believe, as I indicated in my statement, the final responsibility lies with the agency that has the information need and the agency that is developing that system.

In terms of a central oversight, one of the things that is called for in the OIRA legislation is there are evaluations of agency practices. A reasonable thing is to pursue how well those evaluations are being conducted by OIRA.

The other important area is, over time, trying to take those evaluations and finding a common thread, a common trend as to why these problems exist. Another area that OIRA has as part of its legislation is to coordinate the budget proposals with agency practices.

A fair question or a fair kind of a role for an oversight agency is to look at why we continually find, in systems like STAFS, for example, where the estimate that was given to the Congress was $184 million and internally, they had estimates of over $800 million.

Senator BINGAMAN. What program did that relate to?

Mr. CARLONE. It was a Standard Automated Financial System in the Navy and that program has been terminated. But here, you had a situation where the estimates that they had were much greater than estimates they provided to their own management and to Congress.

And so, I think an oversight kind of a role for OIRA, which it already has, is to coordinate the various budget proposals with agency practices. In that area, it is a case of effective implementation of those kinds of things.

Senator BINGAMAN. Does your study or your analysis or any work the GAO has done focus on the question of how well the Federal Government is doing to insert and use these new information technologies as compared to the private sector?

Mr. CARLONE. No, sir, we have not.

Senator BINGAMAN. Have you done any comparisons along the lines Mr. Diebold referred to, of the extent of use of some of these technologies for particular applications here, as compared to their use in foreign countries?

Mr. CARLONE. No, sir, we have not.

Senator BINGAMAN. Like traffic management or any of those areas?

Mr. CARLONE. No, sir.

Senator BINGAMAN. OK. Do you have any thoughts on the question I addressed to Mr. Diebold about the issue of the adequacy of either the number or quality of people we have involved in information resource management? Is this a concern the Government ought to have? Is there something specific we ought to do about it, other than wringing our hands?

Mr. **Carlone**. No, I think that is a problem that we have identified in a number of agencies and we, in our transition series reports call for some action in that area. One of the things we pointed out and I may quote here is that,

> Top managers should also consider innovative approaches to focus expert technical talent on the critical issues discussed. These approaches could include using advisory panels of senior industry executives experienced at introducing complex technology in the organizations.

I would mention, Mr. Chairman, that OMB has proposed a Center for Information Technology Management that you may be aware of and, if I might quote from that concept paper, it points out several evidences of problems and going down the list, one of the areas involves projects lack a business strategy, and it goes on. Certainly, we found that in our work.

They talk about system development plans that are largely designed from the bottom up. Again, we have found examples of that. It goes on and concludes that,

> Generally, agency policy officials responsible for managing these products do not have independent and objective sources of advice on available options and on technical viability of staff proposals.

We would share that view.

It then lays out a number of options. One is to have this, if you will, a cadre of technical people in the Federal research centers. Another one is to contract out, and it gives pros and cons of those various options.

I would add there—I would explore, whether we contract out or whether we keep it within Government I would explore whether having a cadre of technically qualified people or whether within Government or outside, whether we also need to do something in terms of training or getting the right technical folks inside of Government to process that advice and assistance and oversight.

We found in some of the systems we have looked at is that even when an agency has contracted for advice, assistance or consulted for that, at least in some cases, we found that they have not followed that advice and assistance.

Senator **Bingaman**. What is the status of this? Are you referring to a concept paper? Is there anything happening to actually get such a center established?

Mr. **Carlone**. You would have to talk to the OMB folks. This is a concept paper that, as I understand it, was put out for comment right now.

Senator **Bingaman**. I thank both of you very much for your testimony. We will perhaps have some additional questions we will direct to you in the future as we consider what we are to do with this legislation. Thank you very much.

The next panel deals with electronic dissemination. It has three members on it—Ken Allen, Jerry Berman, and Kaye Gapen. Will you please come forward?

I would like to offer a little more information about the panel members. Ken Allen is the senior vice president of the Information Industry Association. Jerry Berman is the director of the American Civil Liberties Union's information technology project. And Kaye Gapen is the dean of libraries at the University of Wisconsin and is here representing the Association of Research Libraries. Please give us your testimony in that order, if you would. Ken.

## TESTIMONY OF KENNETH B. ALLEN, SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS, INFORMATION INDUSTRY ASSOCIATION, WASHINGTON, DC

Mr. ALLEN. Thank you, Mr. Chairman. I have a written statement which I would request be inserted into the record.[1]

Senator BINGAMAN. We will insert all written statements in the record and if you would summarize it, we would appreciate it.

Mr. ALLEN. I will summarize and synthesize in a brief statement here.

I am pleased to be here today on behalf of the Information Industry Association, an organization representing 750 leading information companies, companies such as data base creators and providers, computer manufacturers, telecommunications providers, and even stock exchanges.

The diversity of members within our association is unique, but it shares one common theme—they are all interested in the creation, the processing, and the distribution of information. Our association is 20 years old, but the information industry is clearly much older.

This is the industry that produces the newspapers to inform us, the books on our library shelves to educate and entertain us, the data bases to do scientific and legal research, the computers to process information, and the technologies to communicate with our neighbor, whether they are down the block or around the world.

But most of all, this industry produces information. It produces the knowledge to advance scientific research or, as we have seen in the recent case of fusion research, to raise questions about the accuracy of it. It produces the information for business executives to make decisions about investment and the products they will produce and where they will market it.

It provides information products which assist policy officials, whether in the executive branch or in the Congress to make decisions about important policy issues. But most of all, this industry provides the diversity of ideas essential to the preservation of democracy. It provides a number of different information sources and different thoughts and ideas.

This industry also improves and provides access to Government information and that is the issue which we are here today to discuss. Companies such as Dialogue provide on-line computer data bases which would not otherwise be accessible. Companies such as Mead and West use their own money to collect and create data bases using legal statutory case decisions, information in data bases which makes the lives of lawyers easier and the clients bills lower.

There are even companies such as Dun & Bradstreet which recently invested its own money, millions of dollars, to increase the Government's standard industrial classification code from four to six digits in order to improve the efficiency and the use of that information throughout our society.

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[1] See p. 127.

So, we are vitally interested in the issues before this Committee.

Today we are here to discuss the Paperwork Reduction Act, an act which emerged from the recommendations of the Commission on Federal Paperwork in the Federal data processing reorganization studies of the 1970's. Coming from those two initiatives, it is not surprising that the early emphasis in the Paperwork Act was on the reduction of paperwork in the acquisition and management of information technology.

Now, 9 years later, we are pleased to note that substantial progress has been made in reducing the amount of paperwork that citizens provide to the Government. We note, however, as the GAO just reported, that additional work is needed in the area of managing information technology.

But our industry today believes that it is time to move to the third part of that act, and that is the management of information. As we embark upon an information age, we find it is time to use the authorities in the act to improve the management of information, the information required by Federal decisionmakers, the information required by Congress and the public, and there are the issues that I would like to talk about today.

Let me note right up front three basic tenants of the Information Industry Association. We believe, first of all, that the public has a right of access to Government information. Second, we believe that that public right extends to the electronic dissemination of Government information. And third, we believe the Government has a responsibility to ensure that citizens who need information have access to that information.

It is in the spirit of those three resolutions that belong in the heart of OIRA's position regarding Government information, that we oppose the administration's effort to privatize the National Technical Information Service, and we believe that privatization in and of itself is bad where it implies, as with NTIS, that the Government is abrogating its responsibility to ensure that citizens have access to information.

We also supported and continue to support the EPA's efforts in its toxic release inventory data base—vital Government roles regarding information. We believe the issue before this Committee and before those who are interested in these issues in terms of the Paperwork Reduction Act is, how do we ensure that citizens have access to Government information in the most effective and efficient means.

We believe the answer is a partnership, a partnership in which Government, the private sector information industry, the library community, and the nonprofit community work together, each bringing what they do best to the sectors of information. We believe the way to achieve that partnership lies before this Committee in strengthening the Paperwork Reduction Act.

Specifically, we believe that the Paperwork Reduction Act provides the needed Governmentwide statutory framework to ensure that Federal agencies manage information effectively and that citizens have the proper access to Government information. We believe there is much in the act that is good and we support it.

We believe, however, it needs to be strengthened. Specifically, there is an important goal in the act to encourage the innovative application of information technology by Federal agencies. We believe the Congress should now further add to the act a goal to encourage a diversity of information sources.

The act should make clear that citizens should not be dependent upon the Government as the sole source of information. We also believe that certain Governmentwide information policy principles should be incorporated into the act, to guide Federal agency managers as they make decisions. Our statement lays out a number of them.

Among those are equal access to information by all within our society, and particularly equal access to the underlying data bases as we move into the information age on a timely basis.

Second, we believe that Government information should be available at a cost not to exceed marginal costs. Citizens should not pay twice for Government information. User fees should not exceed marginal costs.

And third and most importantly, there should be no monopoly control by any party, public or private, over Government information. We need to encourage that diversity of sources. Within this Governmentwide framework and set of principles which we believe should be embodied in the act, we believe that ultimately, agencies have to make individual, case-by-case decisions about the specific information activities on their agenda.

We need to take into consideration the unique nature of the information, the user community, the Government's needs and alternative sources of information in providing that information. What works for the Securities and Exchange Commission might not work for the Bureau of the Census. We believe the principles are the same and should be followed in all instances, but the specifics need to be dealt with on a case-by-case basis.

To ensure that those decisions are made in the best interests of the public, we further encourage the Congress and this Subcommittee to incorporate into the act provisions to ensure that the decisionmaking process by which those case-by-case decisions are made are open to all, that all members of the public, the industry, the library community, and members of Congress understand the basis for those decisions and that we have an opportunity to participate in them and to provide our own insights and thoughts.

We believe the open covenants openly arrived at through the formal decisionmaking process will encourage a more efficient allocation of resources in this area.

The benefits, we believe, are clear by strengthening the Paperwork Reduction Act. We will better meet user needs for information in all sectors of our society. We will do it more efficiently. We will free up taxpayer dollars for other important governmental needs.

We will encourage further economic growth and this particularly in an industry where the growth is 20 percent annually and we have a positive balance of trade. We offer much for the future.

But finally and most importantly, modifying and strengthening the act in this way will preserve a diversity of information sources and voices necessary for that democracy. We believe that in the past few years, we have learned much from some of the major programs. The SEC's EDGAR project took 5 years to get where it is today, but we believe the results are in the interest of everyone.

The National Trade Data Bank, which we had the pleasure of working with, with Senator Bingaman, has set the foundation to ensure that citizens have access to the information they need to compete effectively in the international marketplace, drawing on the Government's activities and information, but also encouraging the private sector to provide additional information.

There is much we could talk about in the Paperwork Reduction Act. Two additional suggestions we wish to put forward for the Committee's deliberation. One, we believe, that one of the weaknesses in the act is implementation by the agencies themselves. We believe that a great deal more attention needs to be placed at the doorstep of the agencies to encourage them to step forward to their responsibilities.

We also believe that it is time to recognize that more resources need to be allocated to this activity, both within the agencies and within the Office of Management and Budget. We believe that this activity of information policy and information dissemination should no longer be the poor stepchild of the Office of Information and Regulatory Affairs.

We support the Paperwork Reduction Act. We believe it can be strengthened. We believe it should be strengthened. We look forward to working with the Subcommittee towards that end. Thank you.

Senator **Bingaman**. Thank you very much. Mr. Berman, why do you not go right ahead?

## TESTIMONY OF JERRY J. BERMAN, DIRECTOR, INFORMATION TECHNOLOGY PROJECT AND CHIEF LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION [1]

Mr. **Berman**. Senator, I want to thank you for inviting me to testify here today on electronic information dissemination policy and the need for reform.

Today I want to summarize and augment the views and recommendations of electronic information dissemination which I have written in an article on public access to electronic information, to be published this June, and I ask that a copy be made a part of the record.[2]

Senator **Bingaman**. We will be glad to include it.

Mr. **Berman**. Mr. Chairman, we are all aware, and you are aware as a leader on technology issues in the Senate, that there is a major revolution taking place in the way the Government collects, stores, and disseminates information.

Over the last two decades, the Government has moved from using computer technology to perform its internal administrative functions, such as calculating taxes and figuring out Social Security benefits, to now disseminating extensive public information electronically through Government and commercial databases to serve public policy goals.

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[1] See p. 149 for Mr. Berman's prepared statement.

[2] See p. 443.

The issue is whether these developments will serve the public's right to know? As you know, from your precedent-setting work on the National Trade Data Bank in the last Congress, computer technology can be used to develop information systems which enhance the public's right to know and serve as a catalyst for improving our economic and trade position in the world.

New information technology can also enhance the ability of Government and citizens to marshall critical information to serve the general welfare. In 1986, Congress passed the Superfund reauthorization and included in it the first electronic right to know statute, requiring the EPA to mount an electronic computer database online and use other electronic technologies to make toxic emissions reported by 30,000 companies, involving 300 toxic chemicals available on-line and electronically.

So, citizens no longer having to rely on EPA, can do their own analysis; figure out the toxic levels of emissions in their community; engage in political action; file their lawsuits. It is a case of electronic technology being used for the goal of citizen empowerment and expanding public access to information critically important to the general welfare.

However, when you look out at the Federal Government's electronic dissemination effort, you do not see many examples of the imaginative use of information technology that serves the public's right to know. There are about 400 public data bases, but our Government does not even have an index of where they are.

You try and access many of them—you can get them through the Government, but they are very difficult to use. Many of them are available through commercial firms at twice the cost. This may be reasonable from the private sector's competitive market, but may be creating barriers for citizens to access.

There are problems ranging from the kinds of problems discussed by GAO this morning, which is that we lack an infrastructure. We are at the infancy of this technology. It is new. But I think that one of the fundamental problems is that our Federal law and policy do not specify clear goals for public access and a clear obligation on the part of Government to disseminate useful public information to citizens electronically, at reasonable cost.

I think these laws—the Printing Act, the Freedom of Information Act, the Paperwork Reduction Act establish a public right of access to printed Government material, including printouts from computerized Government databases, but uncertain public access and dissemination rights to electronic public information.

In my view, these laws need to be reexamined, revised and clarified. And I point out, to make public access and dissemination of electronic public information a central goal of Federal information policy. And I point out there is an emerging consensus that the information laws need to be clarified in this way.

Just in the last year, the Office of Technology Assessment, the Administrative Conference, the Library Association, public interest groups, the information industry have all called for information policy reforms to establish clearer public access rights to electronic data and an affirmative obligation on the part of Government to disseminate public information electronically.

Just this morning, I think it will be published in the Federal Register tomorrow, the Office of Management and Budget has issued a new statement on Federal information policy which indicates a major shift in direction, indicating that whatever their policy was in the past in terms of private sector, public sector and who does what in terms of information dissemination, that the major goal is public access and that information is a public asset and that we have to look for strategic and effective ways to deliver information widely to the public in all kinds of formats. And I think that is a basis for real change, not only in the act, but in current regulations.

What do we mean by change? Under the current Paperwork Reduction Act, OMB is responsible for setting information management policy for the Government. However, the clear and overriding objective of information management under the current act is to reduce the Government's costs and burdens of Federal paperwork. Now, that is a worthy goal, but one, we are no longer living in the age of paper and two, there are other goals for information management such as public access and dissemination of information.

Now, in 1985, OMB issued guidance, Circular A-130, which establishes clearly that the right to access of Government information must be protected, but the underlying assumption of the regulations is that citizen access rights are satisfied if they have access to published information.

Therefore, the dissemination of electronic information is viewed as a kind of discretionary Government function. Therefore, if you can get the private sector to do it, no matter what the cost, that is OK, even if citizens may be barred, pricewise, from being able to access the information.

A-130 states, where the information is already substantially available in printed form, the Government can consider dissemination in electronic form to be a service of special benefit, the cost of which should be recovered through user charges.

Under this policy, you have the Government encouraging electronic dissemination, but under a policy which says, do not duplicate a private sector information service of important Government data, even if it is priced beyond the means of public users to use.

There is no writ of Federal agencies to develop subsidy or reduced or fee waiver programs for electronic products similar to those that exist under the Freedom of Information Act. A-130 permits the Government to develop electronic Government dissemination products where there are commercial markets and you can make a profit and that eschews it towards the business and regulatory areas, such as the SEC, the Maritime Commission, but it does not encourage the Government to develop major projects of health, education and welfare and other environmental data bases where market considerations might not make it profitable for the private sector to develop those systems and the Government has no positive obligation to develop them.

I think that the circular today and the current law has worthy goals. We do not want to duplicate unnecessarily the private sector efforts. There ought to be a fair competition. There should not be a Government monopoly over information or a private sector monopoly over information. But these goals need to be read through a much larger goal—how do you serve public access and the public's right to know?

We can no longer rely on electronic information as a secondary discretionary product which can be priced beyond citizens' means. As OMB points out in its recently withdrawn circular, supplying the information on paper is sometimes practically useless today, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use.

And in many cases, the paper product does not satisfy all legitimate users' needs as well as the entire body of information in electronic medium.

Now, I believe that the EPA statute demonstrates that you can satisfy public access goals consistent with protecting a diversity of sources of information.

The EPA wants to make the TRI Data base user friendly, but when they asked for bids on the system, the private sector was asked to bid on whether they wanted to mount that system. They did not, and so it is being put up by the National Library of Medicine. But at the same time, the private sector can get, as under the Trade Data Bank, the basic tape and mount it themselves. A for-profit or non-profit organization can create another TRI database to compete with the EPA database.

That is diversity, but it is also public access. I think that is the model for public access to electronic information and indicates that the time is ripe to use these models, to use the momentum created by OMB and the interest of this Committee; the reauthorization of the Paperwork Reduction Act to rewrite the law and bring it into line with the age of electronic information. The principles underlying the act should be to broadly disseminate useful public information in electronic as well as published formats; to make Government information available in electronic formats in useful and usable formats, as defined by the constituencies they are designed to serve; to ensure that public information is available to the public at reasonable, marginal costs or subject to fee waivers when appropriate; to recognize that a diversity of sources and fair competition between Government, for-profit and non-profit providers of information is essential to the free flow of information; and to ensure that these changes augment other avenues of access—the Freedom of Information Act, the printing laws, the Depository Library Program.

Mr. Chairman, in conclusion, I believe we are at the beginning of a serious dialog on the shape of the public's right to know for the 21st century. Many issues need to be debated and resolved.

If we are to secure these rights and the benefits that flow from our modern computer society, it will take a concerted effort by the Congress, enlightened public officials, public interest groups, librarians, and the information and communications industries to develop new policy initiatives and a consensus for workable reform. Thank you.

Senator **Bingaman**. Thank you very much. Ms. Gapen, why don't you go right ahead with your testimony and then I will have some questions of all of you.

## TESTIMONY OF D. KAYE GAPEN, DEAN OF LIBRARIES, UNIVERSITY OF WISCONSIN, MADISON, WI, REPRESENTING THE ASSOCIATION OF RESEARCH LIBRARIES [1]

Ms. GAPEN. Thank you, Senator. Thank you very much for being able to participate today. I would like to take my 10 minutes to elaborate and point out some things of the testimony that we submitted, rather than to go back over it again.

I come in two roles today. I come as the dean of libraries at the University of Wisconsin, Madison, and also as the representative of the Association of Research Libraries. The University of Wisconsin, Madison, has a major academic and research program. It obtained last year, through its faculty members, $225 million in grants for research. The libraries there hold 5.25 million volumes. We are a resource for the State and for the region. Every year, we lend over 100,000 volumes to citizens and to other libraries.

We are in the process of implementing an integrated information system that will be available throughout the State. Therefore, Government information is essential to the research done at the university, to the teaching done at the university, to the university's outreach programs to the businesses and citizens of the State, and to State government.

I really speak then from two dimensions—the importance of Government information to our university programs and also, relating ARL's commitment to the importance of the congressionally mandated Depository Library Program.

If I was to make a few main points, I would begin by saying that first, OMB's policies and policy interpretations in the past have had a major negative impact. They can just as easily have a major positive impact. Second, because OMB has made substantial programmatic decisions in the name of IRM, we urge caution in determining what and how much centralized control is exerted over agency IRM decisionmaking.

Third, the Paperwork Reduction Act needs to be amended to clarify OMB's role, including a correction of its past overemphasis on the role of the private sector. The recent history of OMB's emphasis on privatizing the distribution of Government information in electronic formats flies in the face of technological developments which enable the public and private sectors to work together.

It has polarized those who believe in privatization as the sole approach from those who do not and we are now at two ends of the spectrum, which is a great gulf. As a result, we have all spent the last 5 years trying to bridge that gulf.

In my judgment, Congress needs to encourage a new context for OMB actions and decisions, and that context must be based on the reality that privatization of access to Government information is flawed in its assumption that privatization is the only cost-effective method possible.

In fact, from our experience at the university, it is clear that a mix of strategies for providing access to Government information and for disseminating it is much more likely to be cost effective and to broaden access. For example, in the libraries at the university, we now purchase electronically formatted information from publishers and information vendors.

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[1] See p. 166 for Ms. Gapen's prepared statement.

We also work with publishers and vendors either to enhance or to simplify access to their information through the use of our own on-line library system. We are beginning to purchase information directly from Federal agencies, and we are also implementing CD-ROM products, which are coming from the agencies, through the Depository Library Program.

In turn, the university produces new knowledge with its access to all of this information and that new knowledge can easily flow back to the Federal Government and to the private sector. I asked staff to prepare a list of Government data bases that we provide access to through Dialogue. There are 34 data bases on that list. The average cost per search for a data base that is provided by the private sector is $125. The average cost per search for data bases provided directly from the Federal Government is $50.

This list is only an example of some of the alternatives that we have to approaches and I am not using it as an example to indicate that the private sector is more expensive than the public, because we have to look at the value that was added, the ease of using, the information that is provided there. But it clearly shows us that we have alternative approaches to follow.

Also, when we talk about the role of OMB in its relationship to information management, we need to look at the role of budgeting, coordination, and evaluation and how that interacts with the different purposes of strategy and policy. We have begun to think about this a great deal as we implement access to different kinds of information on the campus, where many, many more people than have been active in the past are now participating in building databases and using those databases.

A strategy for us is to look at the mix of CD-ROM and on-line products that will be valuable to the campus and which we can effectively afford over time. A strategy for us is looking at the evolving national information network and how databases that are now being constructed in any source will be made available cost effectively through that information network.

A strategy for us is the evaluation of our information resources management for access to the public as part of our own administrative management review program and our own management decisionmaking. A strategy for us is the mix of private sector and public sector activities that can come together.

These strategies, I believe, are equally true for Federal agencies and for Congress as it looks at its own dissemination activities.

Policies for us relate to the relationship of the IRM to effective agency and program management. Policy approaches include our determination that there are national benefits from Federal agency dissemination of information and we support that with our own university and State funding.

Policies for us relate to the responsibility of the agency. Policy for us notes the balance between reasonable and equitable access, sufficiency and economy. And policy for us means laying down directives for taking advantage of all dissemination channels.

If we note the difference between strategy and policy, it can help us, I believe, in looking at the Paperwork Reduction Act and what it can do to clarify OMB's role. The Association of Research Libraries urges the Subcommittee to mandate by statute that OMB information circulars reinforce congressional information policy, as reflected in the Depository Library Law, the printing laws, the Freedom of Information Act, and so forth, which support wide public availability of Government information.

In this regard, I want to talk just a bit about the role of the Depository Library Program, which has played a major role in investing funds for the dissemination of Government information. An analysis shows that for every dollar an agency invests in disseminating Federal information, the Depository Library will pay $10 to put that bit of information on the library shelves and to staff access to it.

The members of the Association of Research Libraries believes that this continues to be an essential role for a free society, but we recommend that Congress reaffirm its desire to have the Depository Library Program continue and that basic Government information continue to be made available to the citizenry at no cost, regardless of the format of the information, and we would continue to commit ourselves to our portion of the funding of that program.

We suggest, however, that we have to rethink the budget mechanism and perhaps the organization of the Depository Library Program since it is absolutely necessary that depository libraries and their State and local tax dollars do not have to pay a greater amount of money than they already pay, again, committing ourselves, however, to furthering broad public access.

We urge the Subcommittee to encourage OMB to pursue its revision of Circular A-130 and we applaud the withdrawal of the January 4, 1989 notice. This is a very important action since Federal agencies have continued to act within the further constraints that it imposed.

We concur with OMB that there is no positive theme in either Circular A-130 or the January 4 notice that a private/public sector sharing of responsibility for information dissemination is good public policy and good economics. We concur with the recognition of the importance of the States who are both partners in dissemination and a major user group.

If I could summarize our main comments on the reauthorization of the Paperwork Reduction Act, we support a limit on how much centralized control is exerted over IRM so that no single agency should be given exclusive authority to dictate policy and enforcement of Government-wide information resources management. Binding guidance is a powerful authority.

Second, OMB jurisdiction makes for an unbalanced mix of budget and information decisions. We urge the introduction of checks and balances in separating OMB in its budgeting role from the coordination of the introduction of information technologies and the auditing and evaluation of IRM effectiveness. This has proven workable on campus after campus and I think that experience will hold here.

We encourage the closer involvement of user groups, including not only ourselves and our libraries as user groups, but the people who finally do use the information—faculty members, business people, and citizens. We encourage the correction of OMB's overemphasis on privatization and we hope that the reauthorization act will do what it can to help reinforce the current laws concerning the Government Printing Office and the Depository Library Program.

In conclusion, in 1988, the Association of Research Libraries adopted a set of principles that relate to Government information in electronic format. First, open exchange of public information should be protected. Second, Federal policies should support integrity and preservation of Government electronic databases.

Third, copyrights should not be applied to U.S. Government information. Fourth, diversity of sources of access to U.S. Government information is in the public interest and entrepreneurship should be encouraged. Fifth, Government information should be available at low cost. Sixth, a system to provide equitable, no-fee access to basic public information is a requirement of a democratic society.

We strongly urge the Subcommittee to support these principles in your work on the reauthorization of the Paperwork Reduction Act, as well as in your efforts to clarify the information resources management roles of other Federal agencies. In the last 5 months, OMB has assured all of us that the intent of A-130 was not to have a negative impact on agency dissemination programs, nor on the Depository Library Program.

In the last 5 years, the Information Industry Association staff have assured the ARL Task Force on Government Information in Electronic Format, which I chaired, that they supported library access to electronic Government information, including the Depository Library Program.

Given my experience thus far, I look for concrete demonstrations of these assurances in the next year. We hope the subcommittee will similarly seek concrete actions which match this rhetoric.

I would like to close by affirming the importance of using the Paperwork Reduction Act reauthorization to provide clear direction to OMB in its statutory responsibilities. Thank you.

Senator **Bingaman**. Thank you very much.

Mr. Allen, you've undoubtedly seen all the recent press about this revised A-130 policy guidance on dissemination of information. Mr. Berman referred to it.

Do you have any reaction to that at this point or do you need to study it further?

Mr. **Allen**. I have not had a chance to read the revision, Senator; I took the weekend off. But in our comments to OMB, we encouraged them to go back to the drawing board and look at it. As I said in my statement, we think the wrong question has been asked.

We think too much of the debate has focused on who does what to whom, public versus private, and we think the issue really is what is the most efficient way to provide public access to Government information. And to the extent that OMB is going to go back and revise the policy to ask that question, we are fully supportive of what they are doing.

Senator **Bingaman**. Mr. Berman, you suggest a very different goal for this legislation than the one that it started out with. It occurs to me that there are so many different jobs that relate to Government information—making it accessible, keeping the collection of information from becoming too burdensome, ensuring that the proper information is collected, assuring that information resource management is accomplished efficiently within organizations, and I am sure a variety of others.

Is it realistic to say, okay, now let us just make that list as complete and comprehensive as we can and tell OIRA, this is your job for the next umpteen years.

Can it all be put right there in this legislation? Is that the proper place for this responsibility?

Mr. **Berman**. Well, I think that there is a need for some overall policy guidance for information collection and dissemination functions, including protecting other interests, not only public access to information, but privacy rights and so forth.

I do not think the objective—one objective is to get away from just paperwork reduction and recognize that information management is a broader concept and it involves some positive goals.

It is not, in my estimation, that we want OMB to be centralized and controlling Government information functions, but to set a broad—almost like a constitutional guidance—series of policies and directions which other agencies can follow as they implement their own collection and dissemination decisions, particularly electronic dissemination decisions.

I do not see, for example, if I say that OMB should provide for ensuring that information reaches a broad public. That does not mean that every data base has to be designed like the EPA data base. That is not the kind of guidance that OMB would give. That would be worked out agency-by-agency, data base-by-data base within the context of who that data base or dissemination product is supposed to serve.

So, you might have a different set of criteria for a national trade data base, depending upon who your constituency is and who you want to reach or an EDGAR system at the SEC where a few public reading rooms might be adequate. But then if you have an environmental data base or a Justice Department data base, you may want to make it user friendly.

Mr. **Allen**. But that would not be made by OMB.

Senator **Bingaman**. Tell me about the 400 Government data bases that you referred to that nobody has a list of.

Mr. **Berman**. There is a private sector firm that has a list of them.

Senator **Bingaman**. Oh, there is a private sector firm with a list?

Mr. **Berman**. They collect them.

Senator **Bingaman**. I see. But there is nobody in Government that has a list?

Mr. **Berman**. Not to my knowledge.

Senator **Bingaman**. What do you think OIRA's responsibility should be for those Government data bases? Obviously, if nobody has a list, there has not been a lot of central control over this process. What do you think a proper role for OMB would be with regard to those data bases?

Mr. **Berman**. Well, if I understand the Paperwork Reduction Act, in the last several years, there has been a mandate that OIRA consider developing an index of data bases or Government information products, published and electronic. They have not done it.

I do not think they have the resources and I do not think that OIRA should be an operational agency creating an electronic index—I think there ought to be an electronic Government index which is accessible by libraries and public citizens.

Senator BINGAMAN. Who should establish that and maintain it?

Mr. BERMAN. Well, I think the criteria for that data base—in other words, should be set by OMB, but I am prepared to see it done by other agencies in the Government that have operational experience in establishing data bases. That could be GAO. It could be NTIS. It could be a combination of agencies who have experience—the Government Printing Office or a combination of agencies that have some experience in putting up such a data base.

Senator BINGAMAN. So, if someone else is going to put up an index of all the data bases, what is OIRA going to do?

Mr. BERMAN. OIRA would set the guidance and require that. It also is setting other guidance for making sure that all agencies report to whoever is putting up the data base to make sure that the index is complete and sets guidance about what would be covered in that index. But I would not make them an operational agency. They are a policy setting agency.

Senator BINGAMAN. Mr. Allen, do you have any comments on this? Is this a need that exists or is the private sector well-aware of what data bases exist?

Mr. ALLEN. Senator, there is a Government data base that is directed by OMB. It is available through the National Technical Information Service for $75 for a 5¼ inch floppy disk.

Senator BINGAMAN. It is a listing of all the data bases that exist in the Government?

Mr. ALLEN. That is all it is, a listing. It is not very useful, Senator.

Ms. GAPEN. There is no value added.

Mr. ALLEN. That is right. There is a need for access to information and to know what information is there. The Paperwork Reduction Act, by establishing the Federal Information Locator System, recognized that need so that there was nonduplication.

As Mr. Berman points out, the private sector has produced such lists. That is not to say there may not be a need for a Government role in this area, depending upon user need for information. But to date, the Government's initiative in that area has not been very efficient.

Senator BINGAMAN. We are going to try to draw the line at how much of a central authority do we want to have in some of these policy areas in OMB, and to what extent do we want to leave it alone? In information resource management, for example, what should OMB's role be? Should it be just what it has been or should it be substantially enlarged? Mr. Allen or Ms. Gapen, either one.

Mr. ALLEN. I will take a whack at that first. I have had the good fortune to be in this area for awhile.

We believe that the statutory authorities assigned to the Office of Management and Budget are proper. There is no need to reduce those authorities, nor do we believe there is a need to expand those authorities.

Senator BINGAMAN. Just on information resource management or are you saying you disagree with Mr. Berman's suggestion that providing public access to Government information needs to be a major explicit goal to a greater extent than it has been in the Act?

Mr. **Allen**. As I said in my statement, we believe it needs to be raised to become a prominent theme in the act, but not the sole theme in the act. The goals for information technology management continue as important today as they did ten years ago when the act was put into place.

Similarly, I doubt there are few of us in this room who would urge that OMB retreat from its efforts to reduce the amount of paperwork that we have to provide from the Government. Those remain and will continue to be important functions. The authorities, the ability of OMB to control the activities of the agencies, we think is sufficient currently.

Where we would urge that it be strengthened is, first of all, in terms of the principles placed in the statute under which OMB will operate, the clear congressional guidance as to the intent. When the act was enacted 10 years ago, the information dissemination functions were sort of an after-thought. They were thrown in just sort of by chance. The focus was on paperwork reduction and information technology management.

We think it is time to elevate the importance of those, but most of all, we think the concept of information resource management needs to be really established today. It is not. The idea of information resource management in a nutshell is that when a Federal manager undertakes to carry out a program, that they look at the information they will need to make decisions about the activities they are embarked upon.

In doing so, they will consider where they are going to get the information, how they will process it, what kind of technologies to use, where will the information be disseminated, to whom, under what conditions, and ultimately, even how will the information be stored for records management purposes.

It is the life cycle approach to information management which is not yet, I believe, part of the Federal psyche. Managers just do not think in those terms, and we think that the Congress, by strengthening this Paperwork Reduction Act, by putting in place the principles and the statutory goals can assist in elevating that.

The third side of it, as we said, is the implementation at the agency level. Agency managers, to a great deal, do not take information resources management seriously and we believe that hearings such as this will emphasize the importance of that, coupled with an open, formal decision-making process for those case-by-case decisions so that all of us—Congress, the agencies, the public, the interest groups, the librarians, the private sector—have an opportunity to understand the basis for those decisions and to participate in them.

Senator **Bingaman**. Ms. Gapen, did you have a comment as to how much centralized authority there ought to be in the information resource management area or other activities that OIRA pursues?

Ms. **Gapen**. I do. I have really been noodling around about this, because it is a problem every place. It is a problem on the campus, as well as being a problem with Federal agencies.

The policy mandates that OMB has are appropriate policy mandates if the intent of Congress is clear and they have some examples of policy issues on page 29 of the first draft of the second notice that is coming out about circular A-130. Examples of policy here are, the Nation benefits from the fact that Government information is disseminated, and then it goes on to list a number of broad givens that exist as policy statements.

That, I think, is an important platform. What the policy statements do not often address—and I think it is something that Ken Allen has rightly described—is that all of us, when we begin to implement new information technologies, we start with trying to improve efficiency in what we are now doing today. So, it looks like improvements in data processing.

Then as we get more experience and as we have more expert staff to rely upon, we extend our management capabilities of the technology and I think the Federal agencies are going through the same thing that we are—how can we bring administrative information together with the information that we want to publicly disseminate because they can, very closely, relate to each other. I think that is a broad policy area that OMB can help to clarify.

I would separate from those policy development issues the coordination of the implementation of information technologies. I liked very much the proposed center that OMB has out for comment on information technology. I think that that center might well be housed with another agency, but it is one intended to bring people from all agencies and people with policy development responsibilities together for discussion.

And then I would add that the responsibility to audit or to evaluate the outcomes of the investment also need to go on regularly, but perhaps those audits as well need to go on in another agency. GAO has done audits, for example, of information access. They did some work for the OTA report on informing the Nation. Those audits can then be used for evaluative and recommending purposes by OMB when they do further policy development.

So, I think there can be a separation of the three main functions, but coordinated together, and it also means that a number of Government congressional bodies are going to be discussing this regularly.

Senator **Bingaman**. Yes, Mr. Berman.

Mr. **Berman**. Mr. Chairman, I want to emphasize that OMB—the executive branch needs some central coordinating function to set overall information policy, and if we are going to move towards a coherent Government policy, there has to be some guidance from some agency and I think whether it is OMB or you rename it or whatever, the President and the executive branch needs that somewhere.

The issue that we have identified, and I think that really needs changing, is the guidance that OMB sets, that we want a new set of policies and a new set of goals—not a new agency and not a splintering up of functions. I am speaking for my institution.

Ms. **Gapen**. May I elaborate on that? That is the point I was trying to make, with differentiating strategy from policy. I think many of the decisions that have come from OMB up to this point in time have really been an effective way to try to direct strategy in the guise of policy.

Strategy and policy can be separated and I think we are all better off when that happens.

Senator **Bingaman**. Let me ask any of you that want to comment on it, a couple of you mentioned in your testimony the issue of copyright and, Ms. Gapen, you indicate that you think that we ought to prohibit or provide that Government information shall not be copyrighted. I gather, Mr. Allen, you have the same idea and I assume, Mr. Berman, also.

Tell me the specific area in which this comes up. Is there a substantial amount of Government information today that is copyrighted which should be readily accessible to the public?

Mr. **Allen**. Let me take a crack at that first, Senator. It is useful to understand that the crown copyright was initially imposed by governments in an attempt to control the flow of information and keeping it out of the hands of citizens, so I think there is more than just a good economic reason for not having it. I think there is a good political reason not to impose a copyright on Federal or Government activities.

The Copyright Act specifically prohibits Federal agencies from copyrighting material. Unfortunately, a number of agencies impose copyright or copyright-like provisions to control access to their information. Specifically, for example, we heard earlier about the cost of Government data bases through Dialogue.

I was recently talking with them and they said that the average hourly cost for a Government database through Dialogue is $25 to $40 an hour, $15 to $25 of that is in royalties that they have to pay to the National Technical Information Service, a copyright-like cost imposed on the private sector.

Other agencies have imposed similar activities in an attempt, in some cases, to control the distribution of their information; in others, to actually raise additional costs for the Federal Treasury. We think overall, the public interest is best served when the Federal Copyright Act is paid attention to in the Federal agencies to not assert copyright.

Senator **Bingaman**. Mr. Berman.

Mr. **Berman**. One of the problems we have is an exercise of what a House Government Operation Subcommittee report called quasi or de facto copyright over Government information, and it happens often in the area of electronic information.

If you say that citizens have access rights under law to publish information, but electronic information is discretionary and we can charge for it, then an agency begins to think that it can set conditions on not only price, but who accesses and who can look at that information for any number of Government purposes because it is discretionary. They do not really have to give it to you.

We went through a 2-year fight with the Information Industry Association and the Library Association to prevent the Department of Defense from exercising that kind of quasi-copyright or de facto copyright over information they thought was sensitive.

It was sensitive, but unclassified and they were worried that our enemies might get a hold of it by using commercial and Government databases. So, they were beginning to say, let us take the information out of those databases because we do not have to provide the electronic version. But whatever it was going to do to the Soviet's quest for information, it was going to hurt our scientific and technical and trade position to do this.

We worked to enact a statute to prevent that from happening. But it is a major problem that will exist until Congress makes it clear that electronic information is clearly accessible and subject to dissemination under the laws of the United States.

Senator BINGAMAN. We have another panel, so let me thank this panel very much, we appreciate your insight. We may perhaps have some additional questions we will address to you.

Our third panel deals with management issues from the agency perspective. Janet Norwood, who is the Commissioner of the Bureau of Labor Statistics; Cynthia Kendall, Deputy Comptroller with the Department of Defense; and Richard Hopf, who is the Acting Commissioner for the Federal Information Resource Management Services at GSA.

Thank you all for being here. Let's start with Ms. Norwood, please, then with Ms. Kendall and conclude with Mr. Hopf.

## TESTIMONY OF JANET L. NORWOOD, Ph.D., COMMISSIONER, BUREAU OF LABOR STATISTICS, WASHINGTON, DC [1]

Dr. NORWOOD. Thank you very much, Mr. Chairman. I am pleased to have the opportunity to discuss our experience with you. I am sure you are aware of the data for which the Bureau of Labor Statistics is responsible.

The data we collect are required by our Government to implement programs, to monitor the state of the economy, to allocate funds, and to index payments. They are used by the citizens of our country to evaluate the effectiveness of Government policies. They are used by the private sector for economic planning, collective bargaining, wage administration, and for escalation of long-term contracts.

The financial markets all over the world await our monthly releases to make judgments on the future outlook of the economy and the direction of stock and bond prices.

For these reasons, we at the BLS must produce data of very high quality. An increase of only one percent in the Consumer Price Index, for example, has been estimated to affect the Federal Government's fiscal position by nearly $5 billion through increased expenditures and entitlement programs and reduced revenues from income tax receipts.

Looked at another way, fully half of the American population lives in a household in which someone receives income that is affected by the CPI. Ninety billion dollars in outstanding defense industry contracts include a labor component that is escalated by one of our series.

Somewhere between $90 and $300 billion in long-term contracts are escalated by the Producer Price Index. And local area unemployment statistics are important components of models that allocate billions of dollars of Federal funds to States and local areas.

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[1] See p. 202 for Ms. Norwood's prepared statement.

Under these circumstances, we must use the best statistical techniques and sample designs that we can. Now, in spite of all these really enormous data collection responsibilities, it is interesting to note that the Bureau of Labor Statistics has an absolutely minuscule portion of the burden hours of the entire Department of Labor. Indeed, because of the large regulatory responsibilities of our Department, BLS represents less than 3 percent of the total burden hours of the Department.

I believe this raises some important questions about the effectiveness of a system which combines the respondent burden of regulation with that of statistical information. This kind of trade-off can be very difficult indeed. Furthermore, the phenomena we measure are complex and they constantly change.

There is a need for re-examination of all that we do so that we can continue to produce meaningful data with the quality needed by our users. While we attempt to keep the burden on our respondents as low as possible, we do, at times, need to expand samples and to obtain additional data to ensure accuracy and relevancy.

For example, today, nearly 8 out of every 10 non-farm workers have jobs in the service producing sector and many of these workers are employed in relatively small establishments. Because service sector establishments tend to be considerably smaller than those in the goods producing sector, we need to go to more of them to maintain consistent levels of statistical reliability.

Developments of this kind, which we face every day, can sometimes result in increases in respondent burden which have not been recognized in the requirements in the act for annual burden hour reductions.

The Bureau of Labor Statistics has worked hard to minimize the burden placed on our respondents. In the ten years since I have been Commissioner, for example, we have completely restructured our output and have eliminated entirely all programs that are not an integral part of the basic corps of national economic intelligence for which we have responsibility.

In this restructuring, which has at times been painful since every BLS series has some important user, we have always taken into account the need to minimize costs and respondent burden. Now, over this period of time, I have given a lot of thought to these kinds of issues.

My belief is that a statistical agency cannot stand still. It must move forward or it will fall backward. We have to find innovative ways to meet the challenges presented by the shifting views of society and the changing economy in which we live.

Let me give you a few examples of the way in which we tried to develop creative approaches to improving data while controlling the burden on respondents. One extremely important area of our work is Federal/State cooperation. For several decades, we have worked with the individual States to maximize the quality and usefulness of data collected through a cooperative system designed to eliminate a dual burden on respondents.

Under this system, the State's statistical agencies work with BLS to collect data using uniform OMB approved questionnaires. BLS provides technical direction and guidance; the States collect the data. The beauty of this system is that employment and safety and health data required by States and local areas within the States, as well as by the Federal Government, can be collected only once, rather than separately by each level of Government.

A similar Federal/State statistical collection process is in place in the Department of Agriculture through the National Agricultural Statistics Service, and is being established in the Department of Education in the National Center for Education Statistics.

The Federal/State cooperative system works well when there is a documented need for State and local data. In many cases, however, the burden on respondents, as well as survey costs, can be significantly reduced when samples are designed primarily to produce national data. In most of these cases, data are collected on a voluntary, not a mandatory, basis. In fact, the only program at BLS with mandatory data collection is our occupational safety and health statistics program.

We have been able to keep our response rates very high under a voluntary system. We get cooperation because our respondents understand the importance of the data we collect, find our output useful to them, and recognize the integrity and professionalism with which the Bureau operates.

BLS is an agency which produces and analyzes data, but it is also a service agency. We take very seriously our responsibilities in helping respondents to understand our statistical output and how it might be used to help them.

Another approach to burden reduction that we have been working on is the tailoring of our information requests to the computerized records of our respondents, especially the larger ones. We believe that utilization of computer tapes and eventually of electronic transmission itself can significantly reduce the impact on respondents of our requests for information.

I am pleased to report to you the cooperation and indeed, the encouragement from respondents that we have received in this area. Now, that is obviously restricted pretty much to the very large respondents.

Critical to all that we do, of course, is our pledge of confidentiality. Statistical agencies like BLS make data available only for statistical purposes and then only in such a manner as to make identification of individual respondents impossible. We have an outstanding record on the protection of the confidentiality of our respondents and the data that they provide to us.

While the foundation of our confidentiality system is secure, we plan soon to consider placing it on a more specific legislative foundation.

I would like to call the Committee's attention to another major initiative in which we at BLS have been involved that will significantly reduce respondent burden, while at the same time, improving the quality of surveys done by the major statistical agencies.

The Paperwork Reduction Act gives authority to the Director of OMB to designate a particular Federal statistical agency to collect certain types of information to be shared with other specially designated agencies in the Federal system.

OMB currently is considering the designation of the BLS as the agency in the system responsible for the collection of business lists identification information—that is, the names and addresses—

which can, under carefully prescribed confidentiality provisions, serve as the universe for the non-farm sampling work of the major agencies of the Government's statistical system.

This effort, now well underway, should reduce duplication of effort, help to ensure the comparability of data collected in our decentralized system, and improve the quality of survey samples.

Now, in concluding, let me say that the experience of the Bureau of Labor Statistics, under the Paperwork Reduction Act, has generally been a favorable one. While all of us in the statistical system tend to believe that our own programs are really the most important, it is necessary often to make trade-offs among equally good objectives.

I can tell you that over the years since the Act has been in operation, we at the BLS have curtailed or sharply reduced a large number of programs that were useful, but not critical. We have done a great deal to reduce the burden of respondents who provide us with the data needed for our statistical series.

While we will continue our efforts, I do not know how much more can be done without a great deal of research and program redesign. This would require extensive resources, a problem involving difficult trade-offs in our current budget climate. And perhaps the most difficult problem of all for statistical agencies is the difficulty in attracting the kind of well-trained young people required to develop innovative approaches to burden reduction.

Thank you very much, Mr. Chairman. I would be glad to try to answer any questions you have.

Senator **BINGAMAN**. Thank you very much. Before I ask any questions, let me call on the other two members of the panel. Ms. Kendall, go right ahead, please.

## TESTIMONY OF CYNTHIA KENDALL, DEPUTY COMPTROLLER FOR INFORMATION RESOURCES MANAGEMENT, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Ms. **KENDALL**. I represent the Department of Defense Comptroller and I am pleased to appear before you today to discuss the Department of Defense's management of information resources under the Paperwork Reduction Act.

I will highlight key aspects of my prepared statement which I have submitted for the record.[1]

The Comptroller is the DOD Senior Information Resources Management Official, designated pursuant to the Paperwork Reduction Act. The Office of the DOD Comptroller has policy and oversight responsibility for information management and general purpose information technology resources for the Department. As the Deputy Comptroller for Information Resources Management, I am charged with carrying out this responsibility on a day-to-day basis.

I will, in the next few minutes, describe the DOD information resources management structure, within the Office of the Secretary of Defense; the actions taken to implement the DOD information resources management functions under the Paperwork Reduction Act; the Comptroller's industry interface initiative, our relationships with the Office of Information and Regulatory Affairs of the Office of Management and Budget; and I will conclude with a summary of our Information Resources Management activities.

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[1] See p. 213.

In 1981, the DOD Comptroller was designated the Senior Information Resources Management Official for the Department of Defense. The day-to-day activities were carried out in the Directorate for Information Resources Management Systems until 1987.

In October of that year, the DOD Comptroller elevated the information resources management function to the level of a Deputy, reporting directly to the DOD Comptroller. This is the position I hold. In that capacity, I am responsible for the functions under the Paperwork Reduction Act and for overseeing the management and control of our automated information systems (AIS).

Section 3506 (b) of the Paperwork Reduction Act recognized the size and complexity of DOD and authorized the designation of an information resources management official in each Military Department. An official in each Military Department has been appointed who is responsible for carrying out their responsibilities within the framework of established DOD-wide policies. This framework has worked well. The DOD Comptroller remains responsible for developing uniform policies and procedures to implement the provisions of the law, and serves as a single focal point for Departmental policy positions regarding DOD and Federal information resources management.

The Department's Information Resources Management program, policies and procedures draw on Federal guidelines documented in OMB Circular A-130. That circular provides the framework for carrying out our responsibilities and functions prescribed by the Paperwork Reduction Act. DOD has implemented the requirements of the Act by such actions as appointing the DOD Comptroller as the Senior IRM Official for the Department of Defense; establishing the DOD IRM program and developing implementing policies and procedures for such IRM functions as information requirements analysis, IRM reviews, forms and reports management, records management, general purpose information technology acquisition, privacy protection, and information security. In addition, we have initiated the DOD IRM review and assessment program, and established an annual target for Information Collection Budget (ICB) with quarterly updates.

In FY 1989, the DOD's information collection budget with approximately 263 million burden hours, remains second in size only to that of the Department of Treasury. Yet, we have met all OMB reduction goals since the start of the program. We established a DOD IRM review program that includes audit activities, management improvement activities, and independent oversight reviews, such as the Major Automated Information System Review Council (MAISRC), DOD senior life-cycle management review body for major Automated Information Systems (AISs). The reviews have improved the management and oversight of information resources, improved mission support, and improved the cost-effectiveness of that support. Other formal management processes to coordinate and oversee information management and information technology areas include a high level IRM Policy Council, clearance of public reports and use of the Federal Information Locator System (FILS), clearance and design of forms, and a quarterly automated information system reporting system.

In May 1988, the Comptroller announced a major policy statement on the future managerial direction of IRM that addresses the major IRM challenges the Department faces. The key elements of that initiative are, one, to establish an information system manager classification standard and series to create opportunities for professional development and career progression: Two, to upgrade the education and training curriculum at the National Defense University and emphasize automated information system program management; and third, to become a principal participant in industry's efforts to develop interoperability standards, and become a leader in adopting and implementing those standards.

As the Senior IRM Official, the DOD Comptroller serves as the DOD negotiator, representative, and focal point for all DOD IRM policy or program matters. We have worked effectively with the Office of Information and Regulatory Affairs staff on a number of items. These include the information collection budget, the information management policies and guidance, the electronic dissemination of Federal Government information, the Federal Information Locator System (FILS), and the 5-year information technology plan. These interactions between DOD and OMB began early with the original Paperwork Reduction Act and they have continued to the present. The DOD Comptroller prepares and submits the Department's information collection budget to OIRA, after advising DOD components of actions necessary to comply with the Paperwork Reduction Act goals set by OMB.

We worked closely with OIRA on the development and implementation of Government-wide guidance related to the Paperwork Reduction Act. For example, we are currently reviewing and providing comments on the guidance on electronic dissemination of information, and when OMB was developing its Circular A-130 in 1984, the DOD provided comments on the draft circular and discussed the policy and procedural guidance with OIRA staff. Another example is DOD's management and operation of the Federal Information Locator System, or FILS, for OMB from 1982 through 1988. When the initial goal of FILS was accomplished in 1988, we transferred its management back to OMB.

DOD and OMB worked together to meet OMB's needs in the 5-year ADP and Telecommunications Plan by defining a workable cost threshold for DOD systems, and by ensuring that the planning and preparation activities for this information would provide the most benefit to both the DOD and OMB.

Last year, we proposed a policy initiative to OMB for high-level Executive Branch council to identify requirements, establish priorities, and propose Federal strategies and directions for information processing standards. OMB has since established two standards committees under the Department-Level Working Group, one for user requirements and the other for standards policy. I am participating as the principal DOD member on the standards policy committee, and my staff will participate in the user requirements committee when it is convened. We look forward to continuing this relationship with the OIRA organization.

In conclusion, we have found that the Paperwork Reduction Act has had a strong and positive influence on both information and information technology in the Federal Government. It has provided the legal authority and foundation for our IRM planning. We have implemented the structures and processes for the management of information resources, including the management of information technology necessary to collect, process, store and disseminate information.

The Department has undertaken a number of initiatives to improve the future managerial direction of IRM. Specifically, we have requested OPM approval of the information systems manager classification and series, we have taken action to upgrade DOD information resources management education and training, and we have revitalized DOD automated information system interoperability and information processing standards activities.

Our initiative on the personnel classification has Government-wide applicability and has the potential to improve information resources management and to recruit and retain highly qualified information resources management career professionals.

The Department is committed to the Paperwork Reduction Act and its goals. We have been successful in achieving these goals, and we anticipate taking other important initiatives to further strengthen the foundation for sound IRM within the Department.

Mr. Chairman, that concludes my remarks.

Senator **Bingaman**. Thank you very much. Mr. Hopf, go ahead.

## TESTIMONY OF RICHARD H. HOPF III, ACTING COMMISSIONER, INFORMATION RESOURCES MANAGEMENT SERVICE, GENERAL SERVICES ADMINISTRATION, WASHINGTON, DC, ACCOMPANIED BY FRANK McDONOUGH, DEPUTY COMMISSIONER

Mr. **Hopf**. I appreciate the opportunity to be here today, Mr. Chairman. I appear with Mr. Frank McDonough, who is my Deputy Commissioner for Information Resources Management.

Mr. Chairman, with your permission, I would ask that my written testimony be placed in the record and in the interest of brevity,[1] I will limit myself to a few remarks.

Senator **Bingaman**. That is fine. We will include it in the record.

Mr. **Hopf**. Mr. Chairman, the Paperwork Reduction Act of 1980 and its reauthorization in 1986 were landmark pieces of legislation. They represent a logical evolution toward the integrated management of an important Federal asset—information and its related technology.

GSA is pleased to play a role in implementing the Paperwork Reduction Act, both in its central leadership capacity, as well as in its own internal IRM operations. I will take a few minutes just to briefly touch on a few of GSA's Government-wide activities under the Act.

In the area of management and oversight, GSA has assisted OMB in developing annual Government-wide, 5-year ADP and telecommunications plans. These plans, which were first issued in 1983, and have subsequently been issued every year thereafter, have afforded us an opportunity to summarize and synthesize agency ADP and telecommunications activities. They have also given us the ability to identify trends and issues that will face IRM managers in the future.

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[1] See p. 235.

Additionally, GSA has assisted agencies in developing their own individual ADP plans. This, I believe, was a requirement of the 1986 Act. GSA helped to establish a format and methodology for those 5-year plans, and we have provided, through our Office of Technological Assistance, a helping hand in the form of consultation and how to establish planning for the conduct of those reports.

GSA also created a methodology for accomplishing the triennial review program, which is mandated by the Act. Each agency's senior IRM manager must perform this triennial review. We started the program in 1984, we had the first planning session in 1986, and I am pleased to report that we have just completed the first complete triennial review process and have forwarded that report on to the Office of Management and Budget.

We are pleased with the results of the triennial review. It indicates a growing awareness of the need to integrate IRM management within the agencies and it has also shown us that there is an increased recognition on the part of the agencies that there is value to self-review in the IRM area.

The reports themselves have indicated that we have achieved some major improvements in IRM management, as well as being able to identify some cost reduction programs.

GSA has also upgraded its own procurement management reviews which we use to support our procurement delegations program. We have expanded the number of reviews that we conduct annually. We have placed even greater emphasis on the procurement process, and we have expanded those reviews beyond the ADP arena.

In the policy area, the Paperwork Reduction Act has given GSA an opportunity of creating an integrated regulatory vehicle. We did that in 1984 when we issued the Federal Information Resources Management regulation. It provides uniform Government-wide guidance covering ADP, telecommunications, and records management. We think the FIRMR, as a regulation, has worked well, but we have recognized that improvements could be made.

Accordingly, we engaged in a 2-year project to simplify and reorganize that regulation, including efforts to make it easier to read and to use. We have also attempted to provide even greater consistency in our policies. We hope to complete that project by the end of this calendar year.

Finally, Mr. Chairman, GSA is also in the business of giving a helping hand. We tried to respond to the complexity of the IRM acquisition process with such programs as our "Go-For-12" program, which had, as its objectives, developing strategies for the speed-up of Federal acquisitions of IRM technology.

As an outgrowth of "Go-For-12," we came up with the "Trail Boss" program, which is intented to help develop IRM managers. This program applies concepts of project management to ADP and telecommunications acquisition processes. So far, we have completed about five of those programs and we have trained over 150 trail bosses throughout the Federal Government.

In addition to that, we have also provided help to new IRM managers coming into the Government, whether they be political appointees or career people, by such documents as the "Senior Federal IRM Manager" and "Welcome to Information Resources Management in the Federal Government." Again, these are examples of our attempt to try to provide a helping hand in this complex area.

In conclusion, Mr. Chairman, GSA is enthusiastic about implementing the Paperwork Reduction Act and because of it, we think IRM is better managed today across the Government. We are cognizant, however, that much more needs to be done.

Thank you.

Senator BINGAMAN. Thank you very much.

Ms. Norwood, you imply that statistical agencies really, by virtue of their responsibilities, have a different or perhaps should have a different treatment when it comes to paperwork reduction responsibilities than some of the other agencies that the Federal Government tries to regulate under that Act.

Should there be different paperwork clearance procedures for statistical agencies, in your view, than for the rest of the Government?

Dr. NORWOOD. I do not know that one needs to have a separate system, but it is very, very clear that the kinds of trade-offs that often would need to be done under the theory, I think, of the Act raise some questions. As I indicated in my testimony, the Bureau of Labor Statistics really does not suffer from this combination. We are such a small part, in terms of burden, of a Department that has vast regulatory responsibilities that we are perhaps better off than if we were separated.

So, I cannot say that I have any evidence of any serious problem, but I think it is clear that we need to have people making the judgments about burden hours who understand survey design. That is a very important element, I believe, in what needs to be done.

Senator BINGAMAN. On the last page of your testimony, you say "we at the Bureau of Labor Statistics have curtailed or sharply reduced a large number of programs that were useful, but not critical."

Dr. NORWOOD. That is right.

Senator BINGAMAN. Can you give us some examples, and indicate whether you think some of those programs should be reinstituted?

Dr. NORWOOD. My experience, Mr. Chairman, has been that whenever we produce any statistical series, there are always users and those users believe that the program is extremely important. There have been some programs, however, which did not need to be done by the Government and could just as easily be done by universities, for example, or others.

We used to have a directory of trade unions, for example, for which we had to collect data from the unions. After we discontinued the program, the Bureau of National Affairs began producing a similar directory.

There were other series which were useful to have, but they were not as important as many of the other things we are doing. The major reason for those reductions, of course, has been budget, but quite apart from that, we have looked at them also, in terms of the burden.

As I indicated, all of our data collection, except for safety and health, is done on a voluntary cooperation basis and we believe strongly that as a result, we need to be extremely careful that we do not ask our respondents to do more than is absolutely necessary, and furthermore, that we need to help them to understand our data and how it can be useful to them. And we have been quite successful at that.

Senator BINGAMAN. Who makes the decision as to which data is critical and therefore will continue to be developed or collected, and which is just useful and will be discontinued? Is it clear that you make that decision or does that decision get made somewhere else? Where should that decision be made?

Dr. NORWOOD. Well, many of the data series that are produced by the Bureau of Labor Statistics are required by law or are used in laws to implement programs and therefore, are obviously things that have to be done.

Beyond that, I think that we have discussions, certainly, within the Department of Labor, and we have had a very good understanding of our role with the Department and, of course, with OMB. I do not think there is any single answer to your question.

Senator BINGAMAN. Well, my point is has OMB traditionally, or at least in the last several years, attempted to make that determination and thereby shut down particular data gathering that the Department of Labor felt was important to continue for whatever reason?

Dr. NORWOOD. We have had some big budget reductions. Everybody has had budget reductions. The way in which they were handled in the Department of Labor, however, was that we, at the Bureau of Labor Statistics, made the determinations about where the cuts would be taken. There was no political interference of any kind.

Senator BINGAMAN. Okay. Ms. Kendall, the Department of Defense was mentioned by Mr. Carlone. According to his statement as I understood it, there are significant problems with the North American Aerospace Defense Command, NORAD's, $1.3 billion effort to modernize the critical systems that provide timely warning that the country is under air, missile, or space attack.

Are you familiar with those problems?

Ms. KENDALL. Only peripherally. That system falls under oversight responsibility of our——

Senator BINGAMAN. Of who?

Ms. KENDALL. NORAD falls under oversight responsibility of our Defense Acquisition Board because it has considerable R&D investment, and does not fall under my oversight for general purpose computing.

Senator BINGAMAN. It does not?

Ms. KENDALL. No.

Senator BINGAMAN. So, you would not be able to tell us the nature of the problems that Mr. Carlone was referring to?

Ms. KENDALL. No, I have not been involved in that one, per se. I may become involved in that one, but no, I am not familiar with the problems Mr. Carlone was referring to.

Senator BINGAMAN. Okay. Mr. Hopf, let me ask you a question. Do you think that the Paperwork Reduction Act needs significant amendment at this time when it is being considered for reauthorization or do you think it adequately and properly describes the Federal Government policy and OMB's role in carrying that out?

Mr. HOPF. Mr. Chairman, I do not have any suggestions for legislative improvements to the Act. I think the Act provides OMB with the necessary authorities to carry out the intent of the Act.

I think probably what we are looking at is feeling our way through the establishment of the various policies that are necessary for effective IRM management in the Government. I think again there are enough authorities to do that.

The policies that we develop are probably going to be evolutionary because the subject matter we are dealing with is, to a certain degree, evolutionary. So, I am happy with the statute the way it is and have no definite recommendations for you.

Senator BINGAMAN. OMB has published a request for comments in the Federal Register on May 12, summarizing a proposal for the Center for Information Technology Management Alternatives, which would provide agencies with the assistance that they need in that area.

How does that differ, Mr. Hopf, from what you folks are already doing with your training of people in IRM that you referred to earlier? Do you have a position as to the appropriateness of this center being established?

Mr. HOPF. I think the center is logically related to the types of services the GSA currently provides such as those that come out of our Office of Technology Assistance.

I think the center provides us an opportunity to explore other approaches, however. For example, a good many of the Office of Technology Assistance programs that GSA provides are through commercial vendors. I think there is probably a need to look for something akin to a federally-funded research and development center to give us some definitely unbiased views from an organization that is not directly related to industry activities.

I think that is one of the options that OMB will be looking at under its proposal and it is one that GSA is quite interested in seeing.

Senator BINGAMAN. Mr. Carlone indicated that they had reviewed eight of these major systems that were being put into place in the Federal Government and found problems with each and every one of them.

Is that something that you see GSA as being able to play a greater role in fixing? What is the extent of the capability GSA has to really help agencies to implement these very large information collection and dissemination systems?

Mr. HOPF. Well, Mr. Chairman, to the extent that those systems are under GSA's jurisdiction and those would be those systems that are subject to the Brooks Act, I think GSA does have a role to play, not necessarily a micromanagement role, but we certainly have the ability to get involved in the process, probably at its most important phase which is in the initial activities.

To that extent, we do have a number of programs to help us and the agencies out. We do have the procurement management review program that I talked about, which we are trying to expand right now. That allows GSA, at certain dollar thresholds, to get involved in an actual procurement at its initial stages to make sure that the basic policies of Federal acquisitions are being carried out by the agency, policies such as the policy for competition.

I do not believe that GSA right now is staffed or has the ability to micromanage those acquisitions through to their completion, but probably the most important phase is the initial phase where the success and the mistakes of any program are identified.

Senator BINGAMAN. Ms. Kendall, I understand the Department of Defense requested OMB to exempt acquisition regulatory matters from the information collection budget.

Are you familiar with that request and the reasons for denying that request?

Ms. KENDALL. I am familiar with the request, not with the reasons that OMB gave for denying. I understand it was made in 1987 to exempt paperwork associated with acquisitions made by the Department of Defense. In fact, our paperwork burden on the public for acquisitions represents 98 percent of the DOD's paperwork burden.

Senator BINGAMAN. Was that the reason for your request to OMB, or what was the reason for it?

Ms. KENDALL. That was not the reason. The reason, as portrayed to me, is that most of this information is associated with acquisitions, solicitations for weapons systems, and also the paperwork associated with contracts, once they are awarded, paperwork that contractors are required to submit to the Department in fulfilling their contractual obligations.

Senator BINGAMAN. Do any of you have any comments on the new version of the A-130 policy guidance circular that is being circulated today? Do any of you have any thoughts about the one that came out in January? Did your agencies comment on the January version?

Mr. Hopf, do you have any comments on this?

Mr. HOPF. I believe GSA did have comments, Mr. Chairman, but I am going to have to plead ignorance on what those comments were. I just have not had a chance to get into that area yet.

Senator BINGAMAN. Ms. Norwood, do you have any thoughts about that circular?

Dr. NORWOOD. Yes, and I am pleased that there has been some further thought given to it. I am not familiar with the new order.

Senator BINGAMAN. But you did have some concerns about the one circulated in January, I gather?

Dr. NORWOOD. I always have concerns about things, yes.

Senator BINGAMAN. That is good. Ms. Kendall, did you folks object to what was issued in January?

Ms. KENDALL. My staff has been working very closely with the OIRA staff in discussing issues concerning the A-130 and resolving those and sharing our concerns.

Senator BINGAMAN. Have you seen the new version yet?

Ms. KENDALL. No, I have not yet seen the new version.

Senator BINGAMAN. You have not seen the new version?

Ms. KENDALL. No.

Senator BINGAMAN. Well, we may have several other questions to submit to you as we get further into the hearing process.

We have another hearing on this same issue Friday. I want to thank all the members of this panel very much for taking their valuable time to testify.

The hearing is adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned, subject to the call of the Chair.]

# REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT: PURPOSE, EFFECTIVENESS, AND NEED FOR CHANGES

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FRIDAY, JUNE 16, 1989

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENT
INFORMATION AND REGULATION,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Jeff Bingaman (Chairman of the Subcommittee) presiding.

Present: Senators Bingaman, Levin, and Heinz.

Staff present: Edwin S. Jayne, staff director; Carole Hardwick-Schneier, chief clerk; Steven L. Katz, chief counsel; Kenan P. Jarboe, professional staff member; Elizabeth Powell, detailee; Ann Schnittker, secretary; and Rich Ashooh, minority professional staff member.

## OPENING STATEMENT OF SENATOR BINGAMAN

Senator BINGAMAN. The hearing will come to order.

This is the second in a series of hearings that we have scheduled on the subject of the reauthorization of the Paperwork Reduction Act.

We heard a number of diverse viewpoints in the hearing that we held on Monday of this week and we expect a very enlightening discussion today.

Monday's hearing focused on the technology and management issues associated with the act. Today we will examine many of the policy dimensions of the Paperwork Reduction Act with a special focus on the activity of the Office of Information and Regulatory Affairs in its implementation of the act.

We hope to learn what some of the consequences and experiences that this arrangement has produced for the public, for businesses, for Federal agencies, and for state and local Government.

Some of the questions I hope to have answered include: If OIRA did not exist, would it have to be invented? Has OIRA fulfilled the purposes of the Paperwork Reduction Act? Despite the importance that we conventionally give to information in our society, has implementation of the Act produced an overly negative information policy in our Government? How can Congress improve the Nation's law on Federal information policy?

In the search for answers to these and other questions, we will first hear the testimony of the administration, as presented by the current OIRA Director.

The second panel will present a public overview of OIRA and the Paperwork Reduction Act in its first 8 years and will discuss the accountability and public participation in OMB's paperwork and regulatory review process.

And the third panel will present the views of several representatives of the business community and will focus on the issues of paperwork reduction, Government forms, and Government regulation of business.

Before I call the first panel, I would like to say that I feel that the worthiness of the goals of the Paperwork Reduction Act are really undisputed. There is a clear relationship between paperwork reduction and Government efficiency, economic flexibility, and cost cutting.

The Paperwork Reduction Act was a milestone in institutionalizing some solutions to what we all agree is an ongoing problem.

I intend to closely examine how well the framework for dealing with this paperwork burden has worked, how well it has worked for the public, for Federal agencies, for businesses, both large and small.

I note with interest that OMB has recently reported a 5.7 percent reduction in paperwork for 1988, and a net reduction of 626 million hours of burden. This sounds impressive. I am sure it is, but I would like to know exactly what this means, how it is determined, and whether we can do more.

Paperwork reduction, however, is just one of several major responsibilities created for OIRA in the Act. Indeed, the Act calls for strengthening cost management of information collection and dissemination and assisting agencies in information policy planning.

The scope of OIRA's regulatory review authority is to say the least a topic of contention. In addition to whatever authority OIRA received under the original act, two very powerful Executive Orders pertaining to regulatory review have been promulgated in recent years, and we hope to review OIRA's effectiveness in balancing its responsibilities, structuring its priorities, and fulfilling the goals set by Congress.

The reauthorization of the Act comes at an important time. We are in the midst of an information revolution when policies about information become decisions about the very nature of society itself.

The previous three hearings held by this Subcommittee all pointed to the need for improving the quality of Government information and to look closely at policies and practices related to information collection access and dissemination.

I look forward to the testimony today and I would now like to call on our first witness, Mr. Jay Plager, who is the Administrator of the Office of Information and Regulatory Affairs.

Mr. Plager, why don't you go right ahead. We are glad to have you here today.

## TESTIMONY OF S. JAY PLAGER, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON DC, ACCOMPANIED BY JAMES B. MacRAE, JR., DEPUTY ADMINISTRATOR

Mr. PLAGER. Thank you very much, Mr. Chairman.

Before I begin, may I introduce my Deputy, James B. MacRae, Jr., Deputy Administrator of OIRA, who is accompanying me here at the table. Various members of my staff are available if we need them.

Mr. Chairman, it is a pleasure to appear before you today to discuss the reauthorization of appropriations for the Paperwork Reduction Act.

With your permission, I will submit my written statement for the record [1] and make a brief oral statement.

Senator BINGAMAN. That would be appreciated. Thank you.

Mr. PLAGER. Thank you, sir.

The Paperwork Reduction Act provides the framework for managing the Federal Government's collection, use, and dissemination of information, and the associated information technology.

As the Administrator of the Office of Information and Regulatory Affairs, created by the act, I have the responsibility on behalf of the Director of the Office of Management and Budget for overseeing the Act's implementation.

It is easy, Mr. Chairman, to become enmeshed in the detailed processes and the intricacies prescribed in the Act and to lose sight of its basic purpose and functions.

Perhaps it would be useful to remind ourselves what those purposes are because when we do, I think we are impressed with the importance of the Act to the development and execution of public policy.

Government relates to the people of this country through a variety of means, but central to most of those means is the communication of words and numbers, information: the information we gather to make policy decisions; the information we distribute in the form of guidance or directives; the information we get back on the effects of public programs; and the information we require our citizens to give us in order to obtain the benefits we provide them.

Most importantly, information plays a critical role in ensuring that the public understands what the Government is about, and that the public has an opportunity, through the political process, to judge whether it wants to make changes in our political course. Thomas Jefferson, even then, called information the currency of democracy.

The management of information resources is a challenge of enormous importance and dimension. It is a challenge that is constantly changing and is growing exponentially.

The National Archives tells us that every 4 months, Federal agencies create more records than were created in the 124 years from the Washington administration to the Wilson administration.

And the impact of information technology cannot be overstated. For example, the National Oceanic and Atmospheric Administration tells us that everyday our Earth sensing satellites send to Earth the equivalent of over 10 million pages of information.

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[1] See p. 250.

Just in the 8 years since the Paperwork Reduction Act took effect, we have seen dramatic changes in technology that affect how we handle information and offer great potential to improve it.

For example, in 1981, electronic funds transfer was used to pay 18 percent of employees. Today, it is being used to pay over 70 percent and the cost for an electronic fund payment, an issue that OMB is always sensitive to, is 4½ cents, compared to the cost of over 30 cents for a paper check.

Fed Wire, the primary wholesale electronic funds system in the United States, in 1987 processed 55 million fund transfers with an aggregate value of $153 trillion. And we have only begun to explore the potential of using electronic data interchanged to streamlined processing of economic transactions.

In this era of massive Government and dramatic technological change, responsible Government must provide some policy framework and oversight structure to guide this collection, use, and dissemination of governmental information.

The Congress, in its wisdom, saw this need and provided, in the Paperwork Reduction Act of 1980, such a framework. We in the executive branch appreciated the depth of the problem. We have, however, been constantly impressed with the enormity of the challenge you have given us.

Responsible management of governmental information involves dealing with the important policy values that are at times involved. It entails balancing the need to collect data against the impositions on those who provide the data, and balancing agency responsibility to disseminate data against the role of the private sector market place. It requires balancing the effectiveness of semiautonomous agencies against the need for Governmentwide policy and agendas; balancing the need to improve the quality of our statistical and data systems against the reality of Federal budget constraints; and, balancing the ability and perceived need of Government to collect more detailed information about us as individuals against our right to be left alone.

As the testimony on Monday, and I trust later today, will undoubtedly demonstrate, the Act has not been easy to implement. The problems have not been easily resolved and our efforts to do both have not been without some controversy.

Some will say we are doing too little. Some will say we are doing too much. And still others will say, we are doing the wrong things. I sometimes have the feeling that either we are striking just the right balance or we are totally off the mark.

Ultimately, the Paperwork Reduction Act is about making Government work more responsively, efficiently, and effectively in a manner that does not unduly intrude upon or impose needless burden on the public.

I believe the record will show that we in the Government have made substantial progress and that much remains to be done. It will also show that achieving ambitious goals of the Act is a shared responsibility, shared by the Congress, by oversight agencies like OMB, GAO, and GSA, but most importantly, by the program agencies themselves.

In my written statement, I have described some of the activities in which we are currently engaged. This includes our work in general information policy reflected by our recent proposals and reproposals for amendments of OMB Circular No. A-130, and our work toward reducing the paperwork burden on the public in carrying out the Congress' goals in that effort.

With your permission, Mr. Chairman, in this connection I would like to submit for the record a copy of our just released Information Collection Budget for fiscal year 1989.[1]

Senator Bingaman. We will be glad to include that in the record.

Mr. Plager. Thank you, sir.

It shows the work we are doing to encourage public participation in the process of balancing the Government's information needs against the burdens placed on respondents.

That participation is strengthened by the valuable and long standing public protection provisions of the Act.

In addition, in my written statement I comment on our current efforts dealing with statistical policy and our coordination activities related to the Privacy Act, the Freedom of Information Act, the Brooks Act, the implementation of the Computer Matching and Computer Security Acts, and some of the developments in Federal automatic data processing and telecommunications.

In the course of all this, we are benefitting from the valuable public suggestions and criticisms that we have been receiving from the support and counsel that this committee and its staff provide us, and from the lessons we have learned from the past.

All of that does not keep us from making mistakes, but it helps us to correct them promptly and to move effectively in more constructive directions.

Rather than launch into a discussion of the specifics of any of these areas and some of the issues and problems we are dealing with, you might prefer that I conclude my remarks and await your questions.

But before I do, in your letter of invitation for this hearing, you asked for suggestions for changes to the act. It is our general view that the authorities in the Act and the framework it establishes provide a workable basis for action.

The process of information management and information technology development has become much more complicated as we move from the traditional ink on paper processes to the enormously expanding world of electronic data bases and distribution.

So far, our experience suggests that the problems lie not in the legislative structure of the Paperwork Reduction Act or the policy values underlying it; rather, we need to find imaginative and creative solutions to the problems of applying those policies in a changing world.

At the same time, Mr. Chairman, we are prepared to discuss constructive proposals for improving that framework, if the Congress should wish to consider that, and for further clarifying the basic policy tenants upon which the Act is based, if the Congress so feels.

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[1] See p. 512.

The list of witnesses that have come forward to testify on the Paperwork Reduction Act reauthorization is compelling evidence of the wide reach of this important legislation. It clearly also reflects the fact that this legislation and its implementation will not be without controversy.

We are especially appreciative of the readiness of the Subcommittee and staff to hear all sides and to develop a balanced record.

We are confident that resulting legislative action will reflect that openness and balance and look forward to working with you in that endeavor.

Thank you very much.

Senator **Bingaman**. Thank you very much.

One thing which strikes me in coming to this subject fairly recently and trying to understand all of the things that you are mandated to do in OIRA and in OMB under the Paperwork Reduction Act, is that you were given, as you said in your statement, a tremendous array of responsibilities and some of them involve paperwork reduction, some involve information dissemination, some involve access to information, statistical policy, regulatory review, information technology, privacy records management.

Will you give us your best description of where your priorities are in that? I think that is where a lot of the debate on this Act comes from. There are some who think that the only value of the Act is to pursue the reduction of the paperwork burden on the business community or on the American public.

That is obviously a very valid goal and purpose, but where does that fit in the priorities? Is that the main priority of your office, as you see it?

Mr. **Plager**. No, sir. I would not see that as the main priority of our office. Our problem and the problem I think that many of us, and I am sure it is probably true of Senators, is that we have many issues, all of which deserve top priority and that it would be unfair to any one of them to say that is our top priority over anything else.

I think the reduction of unwarranted burden on economic enterprise in this country is an important priority, but an equally important priority is to ensure that the public and the Congress have access to the information that is held by the Government, that is collected by the Government, that our dissemination policies are fair and even handedly administered.

I think it is equally important that we concern ourselves with the quality and strength of our statistical policy, and I think it is equally important that we address the other issues raised in the Paperwork Act, such as the development of major systems, computer systems and information management. And the hard truth, Mr. Chairman, is I cannot pick among those and say any one is more important than the other.

Operationally, on a day to day basis, to some extent we are issue driven and we are paper driven, which means that as a request of clearance under the Paperwork Reduction Act comes in from an agency, we turn our attention to that. At the same time, we have people worrying about these other issues.

So that if you ask, "What does my staff do?" My staff worries about all of these issues with equal concern, as I do. On a daily basis, my attention varies from one to another.

Senator **Bingaman**. I guess there are some who feel that the office has been operating, under the previous Administration, primarily in a way that has focused to too great an extent just on the issue of paperwork reduction or the burden of paperwork and has neglected some of the other responsibilities that are contained in the Act.

One suggestion to deal with that, I gather, is that we separately or in some way set up a Chief Information Officer for the Federal Government.

I would be interested in your thoughts about that suggestion, what would that accomplish, what would such a person do, are these things that you think you are already doing and doing adequately?

Mr. **Plager**. Yes, sir. First, let me note that I can understand very readily why an outside observer who particularly pays attention to the media and perhaps to other public discussions would get the feeling that mainly what we do is quarrel with the agencies over paperwork reduction issues because those are the things that appear in the press and are visible.

And I understand why that may seem to be what we do operationally, but in fact, it is not what we do. We do all those other things I talked about.

With regard to the question of a Chief Information Officer for the Government, with all due respect and a certain degree of immodesty, I must admit I think of myself as doing exactly that.

Frankly, I cannot imagine what a chief information officer placed somewhere else in the system would have at his or her command to make it possible to do the things that need to be done to carry out the work of a Chief Information Officer.

For example, that individual would have to be in a position to oversee statistical policy. That individual would have to be in a position to oversee information management programs and computer security and computer matching programs and the Privacy Act.

That individual would have to look at the way in which information burdens are being placed on economic enterprise and simultaneously be concerned with ensuring that public information that was needed is being gathered correctly and usefully and distributed and disseminated.

That function is exactly what the Paperwork Reduction Act mandates that the Administrator of OIRA, under the guidance of the Director, do.

So I think it is a terribly important role and I would support our having that role very much, but I do not understand where it would be if it was not where it is.

Senator **Bingaman**. Well, I am not certain where it would be either, but I am still concerned, as many are, that some of those responsibilities you just described may not have been pursued as priorities in the last 7 or 8 years.

I do not know if that is accurate or not, but that certainly is some of the criticism that we have heard; that the thrust of the office and the interpretation of the legislation have been very much an effort to hold back paper from becoming more of a burden than it already is and to reduce the amount of the present burden. It would seem that there has not been a lot of focus on looking at Government information, collection, and dissemination as a positive activity that Government should perform.

Mr. PLAGER. Let me respond to that, Mr. Chairman, and say this, that if you go back 10 years, not a very long time, but eons in terms of the changes that have occurred both in technology and in Government policy, what you see, if you took a snapshot 10 years ago—was a virtually uncontrolled program of burdens being placed on the public through various regulatory initiatives of agencies with very little real central supervision or coordination.

Presidents before President Reagan—then Vice President Bush—had made attempts to get control over that, but had frankly not been very successful. Various earlier presidents had created committees and commissions of various kinds and I think what we see is that, beginning in the 1980's, a very real effort was made to get control over that paperwork explosion. And I think that was a central focus of the effort because that was where the real problem was seen and, in my judgment, indeed did exist.

Enormous gains have been made. Something like 500 million hours a year has been cut out of the paperwork demands that have been imposed on the public on an annualized basis over the last 10 years. An enormous burden has been reduced.

During that same period——

Senator BINGAMAN. Let me ask—go ahead and finish and then I want to come back to that statement.

Mr. PLAGER. All right, sir. During that same period, I think what we have seen happening is this enormous development of information technology and electronic data bases, and as that has begun to happen, as we have gotten control over the burden and as the issues of electronic data bases have emerged larger, our focus shifts, our effort shifts, our interests have to adjust. That has happened in the Congress and that has happened in the Administration.

So I do not think that it necessarily suggests that as we change our focus that somehow the earlier focus was necessarily wrong.

Senator BINGAMAN. Let me go back to your estimate. You said that it is estimated that over 500 million hours of burden have been reduced. I am not a statistician, but how do you calculate that?

Do you have a base line number of hours of burden that existed on January 1 of 1981 or January 21st, when President Reagan was inaugurated?

How do you calculate the number of burden hours of reduction?

Mr. PLAGER. Yes, sir. That is one of the marvelous mysteries of the system and I have the same puzzlement sometimes as you do. But let me explain to you—or tell you what I understand to be what that information collection budget process is really all about.

It began with the idea that there is a substantial amount of unwarranted and over burdening demands being made on the public and there was widespread agreement on that and efforts were made to look at specific collections at specific requirements. And in the course of doing that, people came up with the idea, we ought to look all the way across the Government and treat it analogously to the financial budget and try to come up with a currency that would be uniform and could be exchanged, if you will, across the Government.

So the notion of this information collection budget was developed and in its early years, as I understand it, basically we went around to the agencies and we looked at their body of information collections and we said, "Okay, guys, give us an idea of how many hours you estimate it takes for the public to fill out these forms in total for your operation to carry out your mission." And out of that process over a period of time came these numbers.

I do not think there is any magic in the numbers, that is I do not think they represent reality in the sense of absolute numbers. I think what they do represent is a pretty good indicator of trends and a pretty good indicator of proportions across agencies.

Last year, we began—well, in fact before last year—we began to have some concern that these numbers may not be as reflective as we would like them to be. So last year, OMB, OIRA, put out a new rule and what we said to the agencies was, from now on when you put out an information collection, we want a box up in the top of the document that you are sending out, the form or whatever it is, we want you to ask the public to report back—you say how many hours or minutes you think it takes, invite the public to report back so we begin to get some public check on your estimates.

And that is what we are now doing, Mr. Chairman, and we are beginning to reassess what these numbers are, but even with those shortcomings, it is a very useful device.

Senator BINGAMAN. Am I right though that up until now, the numbers you have been reporting and the one you just cited of over 500 million burden hours of reduction, are really what the various agencies estimate they have done compared to what they use to estimate that they had done.

Mr. PLAGER. Yes, sir.

Senator BINGAMAN. So in other words, there is no objective means of determining if an estimate is totally off the wall and it was derived for the self-serving purpose of demonstrating that they are accomplishing one of the stated objectives.

Mr. PLAGER. Well, I am sure there is an element of that in there, but it is also the case that once we agreed on a baseline, we then began to subtract in terms of taking out of the system or reducing the size of particular collections and estimating how many relative hours to the baseline were reduced.

So the baseline may be open to real question as to how accurate the agency's estimates are, but once that baseline was established, the system then——

Senator BINGAMAN. But there is no way to tell whether they are in fact making the reductions they estimate from the baseline or not, is there?

Mr. PLAGER. Yes, there is—by looking at the specific collections that have been reduced. So that if an agency says we have 10 collections, each of which takes 10 hours, and we have cut back two of them, we can then subtract 20 hours.

Senator **Bingaman**. I see. So their estimate has to tie back to some specific change in what they have required the public to advise them of?

Mr. **Plager**. Yes, sir, indeed it does.

Senator **Bingaman**. One area that we have heard some criticism about, involves the issue of responsibilities for statistical policy review and whether that has been confused with paperwork reduction clearance.

The issue came up in connection with the census that we are getting ready for, and I gather your statistical staff got involved in that.

Could you explain your involvement and how you justify what was done there?

Mr. **Plager**. Let me make a couple of comments and then I may call on Mr. MacRae to add to them, if he thinks it is needed.

My understanding is that with particular reference to the census, although that frankly happened before I was involved in it, my understanding is that when we reviewed the census as a paperwork collection—a request for approval of information collection under the Paperwork Act—that some of the issues that were raised in the course of that review turned out to be statistical policy issues. Going back to the point I made earlier, one of the things that OIRA has within its overall role is this synergistic ability to be able to bring into play statistical policy issues as well as information management issues as well as paperwork reduction issues.

So that in the course of reviewing an agency's request for an information collection to make sure it meets the criteria of the Act, when we have a statistical issue we call upon statisticians in our Statistical Policy Office and I think that was the dialogue that went on in the context of the census information collection.

Jim, do you want to add anything to that?

Mr. **MacRae**. I would just add that the discussion basically centered over a—not a disagreement, but a questioning dealing with approximately seven or eight questions.

Senator **Bingaman**. This was a disagreement or question between yourselves and the Bureau of the Census.

Mr. **MacRae**. And we ultimately recommended the deletion of some proposed questions and——

Senator **Bingaman**. On what basis did you recommend them?

Mr. **MacRae**. Well, there were several bases. One was the fact that we thought that the questions would not produce the data—that was the basic point—the valid data that was being sought.

The questions involved such things as energy use in homes and things like that. We thought that there were other means by which you could collect the data, more reliable means, and that is where we had the discussion.

I recall at the time also that one of the problems you have on the long form is it was going to take 45 minutes. That was the estimate of the Census Bureau. But everybody seemed to agree that after a certain number of questions people tune out. So it becomes very important that what you include does not exceed the amount of time that people will pay attention. So there were a number of good questions that could have been added, but limiting response time was also of importance.

I recall, Senator, you had asked the question, as a matter of fact, why could we not have included some questions on Indian tribes; a very good question and one could easily debate whether that question should have been there in lieu of some other questions.

But it was a genuine attempt to try to keep the long form from not being too long and also to make sure that the questions that were included would in fact produce reliable data; honest disputes, but I think in every case we were trying to be constructive.

Senator BINGAMAN. The rewrite of the Circular A-130 is an issue you raised in your testimony. It is one that I know is of great interest to a lot of people governing the issue of information dissemination.

I know that you put out something new this week on the subject. Am I right that if an agency were to propose a new automated dissemination service, you would use the original A-130 to review the appropriateness of that, or would you use what you have proposed? Where do things stand at this point?

Mr. PLAGER. Yes, sir. Where things stand right now is that the original A-130, with such changes that may have been made over the years, is in effect.

The A-130 deals with a considerably greater number of issues than the question of information dissemination by an agency in a particular context. There are a number of other things that are covered in A-130. It is rather broad sweeping guidance.

We have become very much aware of the fact that that guidance was written—even though it was not written that long ago—with ink on paper in mind. It was written at a time when electronic data bases were not the central issue they are today.

So while that guidance is still in effect, we are aware of the fact that it is outdated and we want to do something to update it to address the new issues.

We made a pass at that in January with a proposal to get public comment and we surely did. We have now published a document saying, "Hey, wait a minute. Wait a minute. We really did not think that what we communicated was what we were thinking. Let us all go back and start this debate over on a more level playing field." We intend to do that and we have announced the withdrawal of that proposal.

So where we stand basically is we have an admittedly out of date A-130 that needs updating—needs it badly—that we are attending to; that we have a lot of issues that we have to thrash out within the Government; and we have a lot of public interests that have to be heard and responded to. That is where we are.

Senator BINGAMAN. I know of a specific case where there was quite a bit of concern earlier this year. The Maritime Commission tried to go forward, as I understand it, with a proposal for an automated tariff filing and information system and Mr. MacRae, as the Acting Administrator at that point, wrote a letter to Mr. Walsh, the Managing Director of the Federal Maritime Commission saying, "As OMB Circular A-130 provides, the fact that an agency such as FMC may have the capability to provide the information dissemination service such as dial up access, is not itself a valid reason for offering the service. We believe the dial up service is not only unnecessary to the performance of the agency's functions, but in fact represents the taking on of a new function that goes beyond the agency's responsibilities."

Would that same letter be issued today, in light of the new policy proposal that you released this week?

Mr. **Plager.** I know just a little bit about that case. I came in at the tail end of it. I think it is a good one. I am glad you raised this because I think it raises—it highlights some of the difficulties that we have to deal with.

Basically, the FMC, the Federal Maritime Commission, keeps track of tariffs for shipping.

It is basically an operation that services a small—relatively small, but important commercial enterprise, which is the shipping by sea.

The FMC is a Government agency that keeps track of where all these things are. They basically have been doing it on paper.

A couple of entrepreneurs, private interests came along and said, "You know, people out in Kiacuck [ph.] or wherever cannot come to Washington to thumb through your papers. So what we are going to do is, we will go over there everyday. We will get that information. We will massage it. We will reorganize it and we will publish it both on paper and electronically to an industry, a small but concentrated industry that will buy it." So that was going on. It worked fine.

The entrepreneurs were making a little money. They were servicing an important—they were providing an important service to the shippers and the agency was doing its job by maintaining the basic data.

The agency then said, "Okay, we think it is time to computerize everything." Fine. We are in favor of that. The question came up, if they computerize it, do they now provide that same service to those commercial interests as the commercial distributors and publishers were provided?

I do not know the right answer to that, Mr. Chairman. That is a difficult question. I begin with the proposition that Government information is a public asset and should be available to the public through equal and reasonable prices.

At the same time, where there are commercial activities primarily involved in the use of an information product, the question is whether the Government ought to give it away free or essentially free or whether we ought to ask the question much like public lands today. There was a time when we gave away public lands virtually free to private individuals because it was an important policy to get people to move West. We do not do that so much anymore. We now say, "Hey, this is a public asset. We ought to sell it at the market."

How do we reconcile those conflicting ideas? I do not have an easy answer. A-130 does not provide that answer. The FMC case raised that question and we struggled with it and we are still struggling with it.

Eventually we have all got to figure out what the right answer is, do we give it away, even though it has value in a small commercial setting because it is public information, or do we ask the question, here is the public information, but we will make available, but we are not going to market it for free.

I do not know the answer to that because those lines are gray and they are hard to draw.

Senator **BINGAMAN**. I do not know the answer either. I would suggest that there is probably a fairly basic distinction between land and information and the fact that we once gave away land and decided we should sell it does not necessarily mean we should sell information.

Mr. **PLAGER**. Not all certainly, maybe not most. The question is, are there some?

Senator **BINGAMAN**. I think there may be more of a governmental interest in having information readily available to the public than there is a governmental interest in seeing that all land is available at no cost.

Mr. **PLAGER**. I was just trying to illustrate that this a difficult issue.

Senator **BINGAMAN**. But, you cannot tell me whether this same letter would issue today or not under this——

Mr. **PLAGER**. I think the same letter probably would not issue, but that might be more a question of tone and style than a clear answer because, again, I do not know the clear answer.

Senator **BINGAMAN**. If we go forward with the reauthorization of OIRA this year, should it be for a 3-year period? Should it be for a shorter period? Should it be a permanent reauthorization? What is your view on that?

Mr. **PLAGER**. I think the politic answer to that question, Mr. Chairman, would be to simply say that the Director of OMB has stated in testimony that there should be reauthorization and at the same time this, of course, is an issue that ultimately lies with the Congress.

Both of those statements are true, but I do not think they are really quite complete in my judgment. And at the risk of perhaps being impolitic, let me add something to that statement. I think the Congress, the Committee, other committees have a right and indeed a responsibility to oversee, to require accountability of the work of my office in carrying out the Paperwork Reduction Act.

The Congress has exercised that responsibility on any number of occasions by calling for oversight hearings, and we have always responded.

Since 1986, the amendments to the act provide that the Administrator is nominated by the President and confirmed by the Senate. I was the first Administrator to go through that process and I assure you that the process went into great detail into my views on a lot of these issues, and rightly so.

So that I think there are valuable, useful and available mechanisms to the Congress to provide oversight and accountability for my office.

I think the reauthorization process is not the right way to constantly be opening up these issues and I think it for this reason, that basically what is at stake in the reauthorization process is not our commitment to the Paperwork Act. I think your opening comment, and certainly mine, evidenced a share commitment to the goals of that Act.

What implicitly is at stake in the reauthorization process is the paychecks for the career staff who are dedicated to the work of this agency and to carrying out the Congress' will under the Paperwork Act. To constantly challenge that question, to constantly ask, should we reauthorize, should we pay them from 1 year to the next I think is not good policy. I think it is not good public policy. I think it is not fair to genuinely dedicated public servants.

So I would say to you, sir, that this is an issue that the Congress should put behind us. We ought to permanently authorize this activity and we ought to require accountability through the many other mechanisms that Congress has.

Senator **Bingaman**. Are you suggesting that if we do not reauthorize this act by the end of September, that OMB would plan to shut the office and not maintain these functions and maintain the people that are performing them?

Mr. **Plager**. I do not know how that would be handled, sir. The responsibilities—the authority and prohibitions—under the Act continue. The reauthorization goes to the question of whether that effort will be funded in accordance with the act. I do not know how that would be dealt with.

Senator **Bingaman**. You did not address in your opening statement the issue of regulatory review. What do you see as OIRA's role there? I think that is perhaps the most controversial contentious area of activity. What is the proper role of OIRA concerning regulatory review if we do reauthorize?

Mr. **Plager**. The issue of regulatory review, of course, is conducted not under the Paperwork Act per se, but is conducted under the particular Executive orders of the President, No. 12291, and No. 12498.

The relationship between regulatory review and paperwork review and information management is a virtually inseparable relationship.

The vast bulk of the work that comes to us in carrying out our paperwork responsibilities comes to us in the form of regulatory activities, rule making activities, policy statements of future applicability that impact upon the public.

It is virtually impossible to separate those two functions and indeed our estimate of the allocation of resources within OMB is that the vast bulk of our work is attributable to the work of the Paperwork Act as compared to what our regulatory review under Executive Order No. 12291 demands of us.

But they are so intimately related, it would be totally duplicative to try to separate those two functions. They do not compete with each other. They reinforce each other.

Take something for example like the Hazard Communications Standard that came over from OSHA, an enormous regulatory undertaking consisting almost totally of paperwork requirements, information collections.

We go through those documents for paperwork purposes simultaneously with reviewing them for regulatory review. I have found no inconsistency or problem, frankly.

Senator **Bingaman**. Let me defer to Senator Levin for questions that he has on this subject.

Senator **Levin**. Thank you, Mr. Chairman.

On the regulatory review issue, which the chairman has opened up here, under the disclosure requirements which were established by OIRA during the last paperwork reduction authorization, agencies were given the option of having access to OMB's contacts with outside parties. And we have referred to these as the EPA procedures, that is the way they are commonly described in shorthand. They were set forth in paragraphs numbered 4, 5, and 6 of a June 1986 memo to agencies from the then OIRA Administrator, Wendy Gramm.

Mr. **Plager**. Yes, sir.

Senator **Levin**. And you are familiar with those special procedures which were applied to EPA, but which other agencies were allowed to have applied to them if they elected under paragraph 7. How many agencies have requested that those EPA procedures apply to their rule makings?

Mr. **Plager**. I believe in addition to EPA, there are four.

Senator **Levin**. Would you give the list of those for the record, unless you know them off hand? [1]

Mr. **Plager**. I know three of the four; DOT, Treasury, and HUD. What is the fourth, guys? Labor, right that is the one.

Senator **Levin**. Why could these procedures not simply apply to all agencies without their having to request it?

Mr. **Plager**. I think they could. In many ways operationally they do. You may remember in my confirmation hearing, Senator, in which I think you took an active role and I believe raised this issue, I expressed the view then and I have it now that I think those are sound procedures to be generally followed and by and large we generally follow them.

As far as——

Senator **Levin**. If there is a request.

Mr. **Plager**. Whether there is a request or not. For example, in terms of sending any documents that come in, one of the procedures requires that we send to an agency any documents that we receive. We try to do that for all agencies, whether they have requested it or not. So——

Senator **Levin**. How about communications?

Mr. **Plager**. On that issue, I think we basically do not worry about it unless it is one of those that has requested it, but that is simply a convenience and if it became an issue I would not have any trouble with doing it uniformly. It is not a terribly burdensome issue.

Senator **Levin**. Would you give a little thought to the question of whether we should just now have a generic rule for all agencies in this regard and whether we should modify this requirement that agencies request separately that those special procedures apply?

Just let the Subcommittee know for the record what your conclusion is on that.

Mr. **Plager**. No problem, sir. I might just note that the Administrative Conference of the United States last winter had a major discussion over those guidelines, not per se, but over a set of policy recommendations for presidential review of agency rule making, and their recommendations applicable across the board very closely track the guidelines that you and others worked out. I supported those recommendations as a member of ACUS. So I do not think there really is an issue there, sir.

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[1] See p. 689.

Senator LEVIN. Now shifting slightly I would like to ask a few questions about the general rules, the disclosure requirements which apply across the board. How often do outside parties seek access to OMB rulemaking files which have been established under these procedures for public disclosure?

Mr. PLAGER. By seek access, do you mean come to look in our files? My understanding is that at the beginning there was an early flurry, but now it is down to something like, what, three times a month, something of that nature, not very much and we recognize them immediately. It is usually either OMB Watch or one of the press people who come in and we welcome them.

Senator LEVIN. Ever see my staff there?

Mr. PLAGER. I think maybe your staff in fact showed up not too long ago. [Laughter.] And I think they got a personally conducted tour, if I am not mistaken.

Senator LEVIN. Have you received any criticism about the implementation of these procedures?

Mr. PLAGER. Not to my knowledge, sir.

Senator LEVIN. Have you received any suggestions for improving those procedures?

Mr. PLAGER. One suggestion indeed came from your staff, which was that we be a little more——

Senator LEVIN. Other than the usual flurry of suggestions from my staff?

Mr. PLAGER. Which was that we be a little more meticulous about entering the dates of when the rule actually went in the file, and we have implemented that. I think there were a couple of others and I am assured by my Deputy that they are being implemented.

Senator LEVIN. Any plans to amend the current procedures?

Mr. PLAGER. In the light of the Administrative Conference debate and what I understand now to be the adoption of those same recommendations by the American Bar Association section on administrative law effectively approving that process, I do not see any necessary changes to be made.

Senator LEVIN. Would you let us know for the record, what are the five rules that have been at the OMB the longest in the regulatory review process, and how long they have been there?

Mr. PLAGER. Yes, sir. I might just mention, if I may, on that score, that toward the end of last year, we had something like 160 rules that were over age and grade and we had a meeting, my staff and I, and we have now cut that—that was the 30 day list, and we are now down to what?

Mr. MACRAE. About 45.

Mr. PLAGER. We are now down to about 45 remaining of that group. So we are sensitive to this, but we will provide you with your request, yes, sir.

Senator LEVIN. Thank you both so much.

Thanks, Mr. Chairman.

Senator BINGAMAN. Thank you.

I have just one other question. You have proposed in your statement a center for information technology management.

Mr. PLAGER. Yes, sir.

Senator **Bingaman**. It does not seem to me that your office has devoted substantial resources to information technology management. In seeing the breakdown of where your office personnel spend their time, there is not a great deal devoted to this area.

You have a staff of four. Two of those positions are vacant. That is an enormous job to try to assist Federal agencies in implementing or putting in place the technology necessary to properly manage information.

What are your thoughts? I mean is this center the answer to that? Is that a job that really needs to be somewhere else?

Mr. **Plager**. You have put me a little bit on the spot with that question, Senator, because as an Administrator, as an executive responsible for what I consider to be terribly important matters, I would love to have more staff, more resources, more of everything.

As a member of the Executive Branch and particularly OMB, I am very conscious of the budget constraints under which this Federal Government operates, and so I temper my passion with the cold reality that I have got to try to do the best I can with the resources that the Congress and the President make available to us.

We have serious personnel staffing problems. There is no question about it. It is not only true in the information management side, but it is especially true on the statistical policy side where we have to maintain a corps of highly qualified skilled personnel and we do not have a salary structure in the Federal Government that permits us to compete with private industry for the quality people.

We have been tremendously lucky in having first rate people and to some extent being able to retain them, but we are constantly under pressure in losing our people. That is true of the statistical agencies and that is true of the information management people in the Government.

One effort that we are making to try to find a way around this dilemma is this notion of the Center for Information Management. It is an example of trying to think of ways in which we can creatively provide to the agencies, as well as to ourselves, expertise and knowledge about the tremendously changing information management world.

And so we came up with this idea. We suggested several alternative versions of it, and we are seeking public comment.

Senator **Bingaman**. Where would you suggest the center be located?

Mr. **Plager**. Well, as we suggested in the policy statement, there are a couple of possibilities. One of them is to locate it as a Federal agency, presumably connected in some way with our office. Another would be to have it as a sort of contract Government unit. Or, another would be to have it not as a Government unit at all, but almost like a non-profit resource entity. I think the answer is, I do not know the answer. We are seeking public comment. We would be grateful for this Committee's suggestions along those lines.

Senator **Bingaman**. Mr. Plager and Mr. MacRae, we appreciate your testimony very much. We appreciate your working with the staff of the Subcommittee to help us understand the issues that need to be addressed in this reauthorization.

We will have some additional questions which we will submit to you in writing, if we could, and we appreciate you being here today.

At this point I would like the second panel to come forward.

Mr. **Plager**. Thank you, Mr. Chairman.

Senator **Bingaman**. Thank you.

The second panel is Gary Bass from OMB Watch, David Doniger with the Natural Resources Defense Council, and James Martin, who is with the National Governors' Association.

This panel is to present a public perspective and discuss the regulatory review role of OIRA. Why don't we begin with Mr. Gary Bass with OMB Watch and then go to Mr. David Doniger, with the National Resources Defense Council, and then to Mr. Martin, who is with the Governors' Association.

Mr. Bass?

## TESTIMONY OF GARY BASS, Ph.D, OMB WATCH, WASHINGTON, DC [1]

Mr. **Bass**. Thank you, Mr. Chairman.

I must say as I sat here and read Mr. Plager's testimony and heard all that I heard, I am expecting the closing scene here to be that OIRA rides off on a white horse into the sunset and the closing lines or the captions under it are something like, "Please keep in mind that any connection the preceding has with reality is purely coincidental."

I said in my written statement that I do not intend to pick on OMB today, that my goal is to improve the Paperwork Reduction Act and to focus on that.

But frankly, I have to pause a minute and respond to Mr. Plager's comments, particularly the written statement that I have reviewed, because I think the record has to also reflect a different perspective.

Mr. Plager concludes that, "We believe we have implemented the act in a sound and responsible way." Well, probably I think that is disingenuous and outrageous.

Let me start with the disingenuous side. I think it is disingenuous that a 16-page testimony that deals with OIRA does not even mention regulatory review or the focus on regulations.

Your questions and Senator Levin's were very appropriate. It is one of the most significant activities that has been undertaken by the office over the last 8 years. In fact, in terms of allocation of resources, time, and energy among the staff, the two single areas that have had the greatest attention are regulatory reviews and paperwork clearance.

Paperwork clearance is mentioned glowingly in two pages out of the 16 page testimony. That is just inadequate.

I also think that the discussion about all the other functions that have been undertaken by the office, as authorized by the Paperwork Reduction Act, they take great credit for, and in fact, that is exactly what GAO, what in the House side Congressman Brooks had criticized OMB for, a number of outside Government agencies, including ourselves, have criticized OMB for and that is not providing the attention to other functions that are vitally essential to the flow of information in our society.

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[1] See p. 291 for Mr. Bass' prepared statement.

Public participation is mentioned in Mr. Plager's testimony. I can tell you, as Mr. Plager did, OMB Watch was one of the three groups that did come to visit those files at OMB. We have come there a number of times. We have also called the OIRA desk officers to ask questions about the decisions and the responses we get are extremely uneven. In some cases the desk officers will not return our phone calls. In some cases we are told to go to the Public Affairs Office, which has no understanding of the process.

OIRA has repeatedly thwarted public participation, making it at best extremely weak.

We have tried unsuccessfully to meet with OIRA Administrators prior to Mr. Plager. I applaud Mr. Plager and the OIRA staff now for meeting with OMB Watch and other public interest groups and inviting public comment, but we have got to set the record straight that that is very new and we have to acknowledge that.

The last thing that I would point out about public participation: the paperwork clearance process calls for public participation. Yet, there is no meaningful way for the public to participate. There is no public comment period. There is no opportunity to even identify who the OIRA desk officers are. It really does require somebody like OMB Watch who plays the inside game in Washington, DC, to carefully follow these activities—and that shouldn't be.

Even the announcements in the Federal Register are, at best, in Federalese. They are indistinguishable with English the public is unable to discern. The public has no real opportunity to play a role here, but should.

In the written comments and also in the oral comments, Mr. Plager talks about the value and importance of statistical policy and coordination plays at OIRA. And in his statement, he says that the integrity and reliability of the Federal statistical system is one of the most important aspects to improve.

Well, that is one positive I agree with—it should be improved. Our criticism is that not enough attention has been given to the area. The allocation of resources have been devoted to the paperwork clearance and regulatory review areas I have just talked about. Personnel working on statistical matters is inadequate, not only at OIRA, but also throughout the Government. There have been slashes in the budget for statistical agencies and personnel for statistical agencies.

In my written testimony I comment on the fact that the Census Bureau, one of our premier agencies for statistical collection of information, has had the hardest time of any agency in getting paperwork clearance through OMB. It has not only had the hardest time, it has also had the longest delays of any agency.

The last point related to the disingenuous side is the impact that the big stick of OMB and OIRA has on agencies. There is clearly a fear, if not a general concern on the part of agencies, in completing and conducting their statutory missions.

I talk to agencies regularly. Many are fearful about talking on the record or publicly identifying anything that has happened in its relationship with OIRA. OIRA comes on as an enforcer to the agencies and not as a facilitator or an assister.

New to the outrageous side of Mr. Plager's testimony: what we are dealing with here are people's lives. Mr. Plager talked about a number of wonderful activities that OIRA has undertaken, but what does it take? I mean should we bring in video tapes of grain dust explosions and people dying because OIRA delayed a regulation? Should we bring in people who have black lung disease and are dying because of an OIRA delay of a regulation? Should we bring in someone who has cancer as a result to exposure to asbestos and have OIRA tell them that the value of their life could be as low as $1,200 because OIRA feels the latency period necessitates a discontinuing of the value of a human life?

We can turn around now and talk about Tampon labeling. Five years it has taken for FDA to issue or to prepare to issue a regulation on labeling tampon absorbency. Two years of it has been held up through OMB and OIRA. And the end result, as I am starting to understand it, which we found out by exercising the provisions Senator Levin discussed in order to get the agency regulatory draft submissions, women and the public at large, consumers, are even going to be more confused about what to buy in the way of Tampons—particularly, because of OIRA intervention. And in this whole process of 5 years, or 2 years delay at OIRA, women are dying from Toxic Shock Syndrome.

These are not issues that should be set aside or put up into an esoteric area. These are very real issues that affect the public. And, it is not just simply a politically motivated war on regulatory issues, it is also a war on Government publications that this same agency has waged over the last 8 years.

What they credit themselves with having undertaken is cutting out Government publications to the tune of roughly 25 percent.

Now these are not just things floating in thin air. These are things like pamphlets on infant care. These are pamphlets on your housing rights. Our safety net for the information infrastructure, our library systems, which help distribute Federal information to the public, has enormous holes in it now, and those holes are directly caused by OIRA's actions over the last 8 years.

In general, I would say that OIRA's statement today is extremely disappointing and insensitive. The numbers are statistically low, that is disapprovals are very low. There is no doubt about that. But the impact of any one of those decisions is extremely high. If one person dies as a result of a delay of a regulation, that is too much and inappropriate and wrong.

Now I admit that there could be differences in policy perspectives and I did not expect OIRA to come in today and say, "Oh, we have done everything wrong," but I certainly expected them to acknowledge past mistakes and to put us on the track of what can we do to fix things.

I come away from hearing Mr. Plager's testimony believing that everything is rosy, that the picture is beautiful. Well, OIRA's rosy picture has thorns and they have pricked and bloodied agency morale and public protection.

And I must say that I do not believe that information policy or regulatory policy should be held hostage to the current political administration—whatever administration is in office. These are important, fundamental, infrastructure activities within our Government. They are very important bipartisan issues, and what we need to be doing here is to start to codify in legislation how to protect these fundamental premises.

If there were abuses, as I have started to identify today, if there were mistakes made, those mistakes were made under the existing law. There is nothing to preclude that from happening in the future, despite the good intentions of Mr. Plager's tenure. What happens when he leaves? Our job has to be to fix the Act now.

Now let me turn—now that my anger is over with the testimony I have just heard—to the side that I promised to do in my written testimony. Let me talk about how do we improve things.

It is very important for you to understand that there is a documented, well-documented, long history of abuses and problems.

Starting from that premise, we need to turn to how to fix the Act. I want to just address five major areas. My written testimony has much more detail.

First, I think there needs to be considered and careful Congressional oversight. The creation of this Subcommittee is a major step forward and could be of great value, but throughout the history of the last 8 years, we have had at best spotty congressional intercedings. And most of those opportunities in which there was congressional oversight have been on specific issues and we have missed the core problems. In essence, they have been Band-Aids. They have focused on an immediate problem instead of the overarching or undergirding policies that have led to those problems.

This Subcommittee and this opportunity for reauthorization is a wonderful opportunity to review those problems and move us forward. No one, by any means, is challenging the fundamental premise of the Paperwork Reduction Act. It is a good law.

Your statement, as an opening statement, and Mr. Plager's comment during the questioning, I could not agree with more. The problem is in how the Act has been implemented. That is where problems occur.

Let me say one more thing about congressional oversight and that is that it is essential that there be an ongoing process. This quick review of reauthorization say every 3 years or if permanent, or every 5 years, or whatever it may be has put us in this very difficult position of relearning the process every time we come back to it. It creates a situation where the players become dogmatic—even antagonistic. We do not need that.

Most major agencies come up for reauthorization every year, if not, every 2 years. This is a major piece of legislation and it should face the same kind of scrutiny and ongoing process that other agencies face. It also is a way of insuring Congressional oversight.

My second point: the paperwork clearance process has significant problems both in terms of policy and procedure. In terms of policy, we see tremendous unevenness in what desk officers determine as acceptable or not acceptable.

For example, we will see a paperwork proposal go over to OMB that an agency thinks it needs to do to carry out its statutory mission. An OIRA desk officer will review it and sometimes disapprove it. And the only comment we will see in the public files, at times, is a statement that says, "Lacks practical utility"; that is it. Other times we will see handwritten notes that are not even sentences. They are very cryptic. That is it, with a checkmark that says, "disapproved."

The review criteria, "practical utility," is an enormous area for OMB to jump in and do almost what it chooses. We have to tighten those terms, require greater accountability, and give much greater clarity to guide OMB in what we want it to do.

The kinds of decisions that OIRA desk officers make necessitate detailed justifications so that the public and Congress can hold that agency accountable.

We have no idea what the decisions are based on. Maybe they are right; maybe they are wrong.

Thirdly, in terms of the process, there is no opportunity for a formal appeal from agencies. An OIRA desk officers says, "No" and there is no official recourse for the agency.

Take the decennial census you brought up earlier, here was an OIRA desk officer that raised "questions." Well, "questions" are deemed by agencies as tantamount to the gigantic OMB hammer coming down and OIRA, in the Census example, proceeded to force the agencies to delete questions and change their sampling size, which affected the statistical ability of policy makers, lawyers, and program people to find out what is happening in our cities and our towns.

Agencies need some kind of an appeal process to review carefully those decisions that are made by OIRA.

Fourthly, the dissemination practices; I did not come in to bury Caesar today. OIRA has done a wonderful job this week by withdrawing its January 4th proposed revision to Circular A-130. They should be applauded. They should be congratulated. When they do something right they deserve a pat on the back. They have finally done something right here. They withdrew the January provision and they have provided a very carefully crafted discussion of comments they have received.

They have also identified a new information policy framework in which they intend to proceed. I think that is very good. We may agree or disagree on that policy framework, but they have done it in a very studied and careful manner.

Now our challenge here is to codify those kinds of changes in legislation and the reason is, there is nothing to say that next year or in the next administration those policy changes won't again diametrically change. All of a sudden, OMB calls for major turn around to the last 8 years of what we have had. What's to keep OIRA from changing again to the policies of the last 8 years? We need to put it in legislation.

And let me say one thing about that FMC example that you brought up, Mr. Chairman. In my mind there is another issue embedded in there and that issue is if an agency can create a reading room in which the public can come and get access to information that happens to be on a computer, then what difference does it make if we put a modem on it and a telephone wire so that someone in Podunk can get access to that same information. Why should someone have to come to Washington, DC, to get access, when the technology exists to get it from back home?

We have moved into the electronic information age and we should capitalize on those wonderful technologies. We have great opportunities here and we should really try, as Mr. Plager said, to be creative, and move forward with an affirmative position that agencies have a responsibility to disseminate information in the widest available manner and at the least possible cost.

Fifthly, regulatory reviews; the Executive orders should be rescinded, Executive Order 12291 and 12498. Short of that, there are immediate Band-Aids that need to be applied through the Paperwork Reduction Act.

First off, I think we have to deal with the issue that Senator Levin started to bring up and that is the delay issue. There is no way to know the degree or extent to which OMB/OIRA is delaying regulations.

Now the paperwork side permits modest public accountability. OIRA provides a computer printout that says when something has come from the agency, what the title of it is, how long it has stayed at OIRA, and what the decision is.

That same kind of procedural activity should be done for regulatory reviews. Similarly, there should be a log, just as there is for paperwork, on regulations. There should be justifications for OMB decisions that are publicly available. There should be a log of all oral and written communications not only with the public, but with the agencies.

Much of what we are dealing with goes undocumented and that is one of the major concerns of agencies. I also must say on the regulatory side, we have seen repeatedly a reach in through the Paperwork Reduction Act to challenge the very nature of regulatory initiatives.

A very bizarre situation has occurred because of the 1986 reauthorization process. We have a public protection clause in the 1986 provision. Actually, it started in the 1980 provision. And it said if there is no OMB authorization, a control number on a form, you, the public do not have to comply with that form.

In 1986, it was extended to regulatory paperwork. Just this year the 9th Circuit Court reversed a criminal decision in which someone in Alaska had not completed the form, a form on mining rights, which was required in a regulation. There were criminal charges for not completing that form; and this invididual was found guilty of a felony. The individual appealed and won the appeal because the form had no OMB control number. Is it our intent to let criminals go free because OIRA has not put a control number on papework or to allow OIRA to invalidate a regulation? I think that has got to be fixed and fixed properly now.

My last point, and it is probably to the heart——

Senator **Bingaman**. Do we have to legislate to fix that problem?

Mr. **Bass**. Absolutely.

Senator **Bingaman**. That requires an act of Congress to solve that problem?

Mr. **Bass**. It certainly does. The current situation is in the legislation, because of 1986 amendment, is a provision that says if regulatory paperwork has no OMB control number on it, the public does not have to comply with the regulation, superseding any other provision of law.

My last point is that a fundamental shift in the focus and priorities of the act has to be undertaken now. Paperwork reduction is a laudable goal. There is no problem in our mind with that, but it must be put in the context of what the fundamental purpose of the law is, and that is information resources management.

Paperwork reduction is supposed to occur within the context of assisting agencies to fulfill their statutory missions. The problem has been that OIRA has seen its highest priority as paperwork reduction. OIRA views all paperwork, whether it be a statistical activity or whether it be some survey, as burdens.

In doing that, we do not see the other side of the picture. What is the benefit of the paperwork? OIRA tells agencies to put on each form the amount of burden. Well, the public does not get to see how much benefit comes from that. Furthermore, OIRA asks someone, say it is a reporting requirement to industry, how much burden—say 10 million hours to fill this form out. It really does not matter how many hours it says, and it ask for you, the person filling out the form, to respond about the realistic nature of those numbers. Well, of course, an industry is going to view a paperwork requirement as a burden. Many times, they are going to say the requirement is too burdensome. But the public, who may benefit from the paperwork, never has an opportunity to comment on it because they never see the form.

My point is that the whole fundamental focus of the law needs to shift itself and put the priority on information resources management, not the line by line enforcement procedures that have occurred with OIRA in the past. We need to change the role of OIRA to assist, to be a gatekeeper, to help agencies, to move us forward in an electronic age.

So I conclude today with a feeling that things need to change. I see my OIRA colleagues riding off on the white horse telling me that everything is picture perfect. It is not and we have to do something about it this year.

Thank you.

Senator **Bingaman**. Thank you very much.

Mr. Doniger, go right ahead and I will have some questions for each of you after we hear from the whole panel.

## TESTIMONY OF DAVID D. DONIGER, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, WASHINGTON, DC [1]

Mr. **Doniger**. Thank you, Senator.

Senator, my organization is staffed by attorneys and scientists who are committed to securing the faithful implementation of the Nation's landmark health and environmental protection laws. But for 8 years we have seen the faithful execution of those laws frustrated repeatedly by the pernicious effects of the OMB regulatory review process.

I believe the process cries out for basic legislative reform and the time for reform is now during the reauthorization of the paperwork law.

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[1] See p. 325 for Mr. Doniger's prepared statement.

The Office of Information and Regulatory Affairs has developed into a centralized, secretive, and very powerful institution which is hostile to the health and environmental laws that this Congress has passed.

Through the two Executive orders and portions of the Paperwork Act and through the collateral power that OMB has over agency budgets, OMB exercises unwarranted control over regulatory decisions by agencies like EPA.

The power OMB has aggrandized comes directly at the expense of Congress. Those in OMB who are hostile to the Nation's health and environmental laws cannot win in open legislative combat over the merits of those laws, yet, they are able to slow down or block the implementation of the laws through the clearances they impose in the regulatory review process and the collateral power over the budget.

OMB officials disingenuously state that formally they cannot directly make decisions or dictate decisions to the heads of agencies, but they have constructed highly effective ways of indirectly and secretly working their will. In all, under the two Executive Orders and the Paperwork Act, EPA and other agencies can be required to get five separate clearances from OMB in order to issue a regulation; one clearance to collect information essential to determining the dimensions of a health or an environmental hazard; a second to begin the development of a rule; a third before the rule is proposed; a fourth before it is promulgated, and, a fifth in connection with any recordkeeping and reporting requirements that are needed for compliance with the rule.

What's more, there are no effective time limits on how long OMB can hold rules hostage by withholding these five levels of clearance. Under the Executive Order 12291, for example, there is no time limit preventing OMB from indefinitely extending its review of a proposed or final rule merely by a telephone call to the agency. The power of indefinite delay effectively gives OMB a veto power through which it can extract substantive changes in the rules.

Most important though is OMB's collateral authority over an agency's budget. The expressed or implied threat—secretly, of course—of budgetary retribution effectively increases the leverage of OMB in arguments over the merits of a rule. In the often quoted words of Jim Tozzi, a former Deputy Director of OIRA: "The Government works using three things, money, people, and regulations. The agency must get all three from OMB."

Technically, the head of an agency can appeal to the President to overrule OMB objections and order a rule cleared. Other tools to influence the outcome of a conflict with OMB exist as well, such as making information available to Congress or the public.

But agencies will rarely take recourse to these formal or informal means of fighting OMB, the reason is, it is simply too expensive. As former OMB Director James Miller, put it, "If you are the toughest kid on the block, most kids will not pick a fight with you. The Executive order establishes things quite clearly."

The result of this process has been documented repeatedly in congressional committee investigations and elsewhere. There have been numerous clear instances of long delays in issuing health and environmental protection rules and subsequent changes in the outcome of those rules. Many regulations have been altogether blocked. Others have been sprung loose long after statutory deadlines, only after lawsuits by organizations like mine.

People have died as a result of the delays in substantive changes caused by OMB. People continue to die today because of these actions.

Let me give just one example of OMB's past and recent abuses this morning, and that is the familiar subject of asbestos. The repeated interference with EPA's effort to ban the manufacture and use of asbestos, a known cause of cancer, is the best documented in longest running abuse in the EPA arena.

In 1984, EPA sent to OMB proposed regulations to prohibit manufacture and use of certain categories of asbestos and to phase out remaining production and use over 10 years. OMB held repeated secret meetings with industry. OMB held up the proposed rules for more than 6 months arguing, among other things, that the cancer deaths in the future should be discounted and considered to be worth as little as $22,094.93 today.

OMB ultimately refused to approve the rules and pressured EPA to drop the effort and leave asbestos control to speculative future actions by OSHA and other agencies.

In February, 1985, EPA caved in. Later, in the face of a Congressional investigation and public outrage, EPA reversed itself. In January, 1986, 18 months after first submitting the rules to OMB, EPA published its proposals.

But they are still not in effect. OMB held up the clearance of the final asbestos ban and phasedown rules until, we understand, just 2 days ago, and we do not yet know what changes OMB may have exacted from the EPA as the price of clearance this week.

The fact remains that the final rules were bottled up at OMB for 6 more months. It has been 5 years since EPA had the asbestos ban and phasedown rules ready for proposal, and OMB bears the responsibility for the continuation of the utterly outrageous health threat for all these years.

Less easy to document, but no less real are other substantial costs. Government money is wasted as agencies are forced to devote more staff time and budget to each regulation in order to satisfy the paperwork demands of the OMB. Other needed actions to protect public health and environment are not taken either because the necessary resources were eaten up clearing OMB hurdles for earlier rules, or more perniciously, because staff at the agencies simply give up trying to take actions that they believe OMB will later block.

The secrecy of the process makes a mockery of rights and protections which are supposed to be afforded the public by the Administrative Procedure Act. This is true even under the Clean Air Act, which is one of the few statutes that expressly requires the public docketing of EPA submissions to OMB when they are sent over and OMB comments back. OMB officials simply substitute undocumented phone calls and meeting for written materials. What's more, the OMB influence most often comes to bear either before the procedural requirements of the APA kick in, that is before proposals, or after the close of the comment period.

As if the present array of powers at OMB were not enough, it now appears that a group of uncertain composition headed by the same Jim Tozzi I mentioned earlier is proposing yet a new Executive order to further extend OMB's reach. As reported in the June 9, 1989, issue of Inside EPA, which I have attached, on behalf of a group known as the Federal Focus, Mr. Tozzi has proposed a new Executive order specifying new procedures for the conduct of risk assessments for chemicals that can cause cancer and other serious illnesses.

The new order's stated objective is to force EPA and other agencies to reduce their estimates of health risks. The order apparently would bar EPA from considering the danger to the most sensitive and most heavily exposed people, forcing instead a misleading focus on so called average risks. That, by the way, would result in having to ignore the plight of people who live near uranium mines out in the Southwest because they are not "average, people"; they are people most heavily exposed.

In addition, the proposed order apparently would require EPA and other agencies to dismiss as "insignificant" risk levels that are hundreds of times higher than levels that those agencies traditionally have considered worth regulating.

What greater OMB intrusion could there be into the duties and prerogatives of EPA or similar agencies. This new attempt to manipulate scientific guidelines deserves a quick coup-de-grace.

But, Mr. Chairman, it is not enough just to block further aggrandizement by OMB. I urge you and your colleagues to end OMB's current conduct of regulatory review as a secret exercise in hostage taking and extortion.

The most elementary reforms needed are to place regulatory reviewers under basic obligations to provide public and contemporaneous documentation of their facts and arguments and, as well, their contacts with agency officials and industry representatives.

Three additional reforms are needed. First, Congress must limit regulatory reviewers to one bite at the apple, not five sequential secret clearances like OMB now has.

Second, Congress must establish strict and non-extendable time limits for that one bite at the apple, which we believe should be limited to the public comment period following a proposal.

Third, and most important, Congress should divorce regulatory review from OMB's collateral power over agency's budget and make such review proceed on the strength of argument rather than on the basis of extortion and retribution.

The only way to do this is to remove regulatory review from OMB. Even accepting for the sake of argument that there is a case to be made for an executive branch or inter-agency review process, it should be one of open comment on agency's proposed rules in an order to improve their factual basis or uncover possible policy conflicts.

When disputes arise, it should be the reviewer's responsibility to raise the matter higher, such as to the cabinet or the President, not the responsibility of an agency head. It should not be in the reviewer's power to block action indefinitely and force agency heads either to appeal over their heads on pain of retribution in the budgetary process or simply to cave in.

It should be obvious that the cited Presidential interests in policy coordination do not extend to violating the mandates of congressionally enacted and Presidentially signed laws. That is the antithesis of the President's duty to take care that laws are faithfully executed.

And it should be obvious that the present OMB review process, which is cloaked in secrecy, loaded with repeated clearance and veto opportunities, free of deadlines and linked to budgetary retribution, goes beyond any stated rationale for policy coordination.

Mr. Chairman, the Paperwork Reduction Act is the only even tangential legislative authority for a portion of the OMB regulatory review process, namely the paperwork clearances. The rest stems from the Executive orders and OMB's extensions thereon. But in amendments to this law, Congress can curb these usurpations of power and restore the openness and responsiveness of regulatory agencies to the mandates and the laws that Congress has assigned them.

So I urge you to include reforms necessary to end the secrecy, hostage taking and extortion inherent in the current OMB regulatory review process in your amendments to the Paperwork Reduction Act this year.

Thank you.

Senator **Bingaman**. Thank you very much.

Mr. Martin, we would be glad to hear from you. If you could summarize your statement, please.

## TESTIMONY OF JAMES L. MARTIN, LEGISLATIVE COUNSEL AND DIRECTOR OF STATE/FEDERAL RELATIONS, NATIONAL GOVERNORS' ASSOCIATION, WASHINGTON, DC [1]

Mr. **Martin**. Good morning, Mr. Chairman, and thank you for inviting the National Governors' Association to appear this morning.

My statement is written as a summary statement. I think it will take about 3 or 4 minutes.

Senator **Bingaman**. That is fine.

Mr. **Martin**. And then I will be glad to answer and respond to any of the questions you have asked the other witnesses this morning or others.

My name is Jim Martin. I have been with the National Governors' Association 23 years, and in that time I have dealt with a lot of ideas and suggestions for paperwork reduction, intergovernmental cooperation and to make the system work better both for Congress and the Governors, as well as the National Association of Counties.

The National Governors' Association was a very early and strong supporter of the Paperwork Reduction Act. The proposal was strongly supported, as you know, by President Carter. It passed the House by 328 votes and had the strong leadership of the Federal Paperwork Commission, Representative Frank Horton and especially the chairman, Jack Brooks, of the House Governmental Operations Committee.

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[1] See p. 337 for Mr. Martin's prepared statement.

I have three points this morning. We supported the original Paperwork Reduction Act. The Act is working very well and we support the reauthorization of the Act.

We suggest an amendment to one of their four basic requirements; that the Federal Government agencies utilize state and local procedures to the greatest extent possible in carrying out Federal rules and regulations.

First, that the—we supported the original Act. We support many things that reduce paperwork, including the original creation of the Advisory Commission on Intergovernmental Relations, Intergovernmental Cooperation Act, Intergovernmental Personnel Act, led by Senator Muskie and Representative L.H. Fountain.

We think in essence that every effort to create Block Grants is an effort to reduce paperwork. This was a primary result of the Model Cities Act, The Land and Water Conservation Fund, General Revenue Sharing, Small Cities Block Grant. The General Revenue Sharing Program had administrative cost of one-half of 1 percent because the entire thing was computerized and operated. That is why State and local Government liked it so much.

Congress did not do away with it because the program was not working and people did not like it. They did away with it because they needed to save the money for deficit reduction.

One rough measure of the efforts for paperwork reductions to look at are pages in the Federal Register. I admit that this is a rough estimate, but you asked a witness earlier if there was a measure. We think pages in the Federal Register are one measure of that reduction in paperwork.

Every organization, including the National Governors' Association, wants more Federal regulations for some issues and less for others in their broad range of things that they are dealing with.

The Governors' Association deals annually with a range of 25 to 30, 40 issues a year. For some we want more regulation and some we want less. The potential of adding regulation is limitless. There is no limit to the amount of regulation that can be added if every interest group, including the Governors' Association, got everything they wanted to regulate the things that they are interested in.

For instance, we think EPA should stop micromanaging state and local Government, second guessing us and correcting us through the permit process and get on with the business of what they and only they can do.

The National Governors' Association supports minimum national standards in air toxic issues. There are 180 identified air toxics and they have only issued regulations for seven. Whether it is EPA or OMB or whoever else in the Federal establishment, we think they should go forward with those minimum national standards in air toxics and leave the micromanagement of permit systems to state and local Government.

I have listed in my testimony the reductions in the pages of Federal Registers that is phenomenally a high of 87,000 pages a year in 1980 down to 53,000 in 1988.

The context of that I think, Mr. Chairman, is the 80 percent of Americans live in communities of less than 10,000. It is not that two-thirds of America is urbanized. It is the fact that 82 percent of

America lives in small communities of less than 10,000. It is those 10,000 population communities that are having to cope with these 53,000 pages of Federal Regulations.

The Federal Government does not run domestic America. Domestic America is run by State and local Government. The State of New Mexico has to relate to most of these 53,000 pages. We can only do it by exception. By exception we go after the agency or we ask for OMB to intervene.

We asked for OMB many times to stop regulating what they are doing or the agency to stop and start what they are doing. In the end, Governors will appeal to the President and in the final analysis, they come to you, as you know, Mr. Chairman, and ask Congress to correct the problems.

As one organization where a staff can never be holier than the church since there are only 50 Governors. You know yours. Every Senator knows their Governor and you can ask them to verify that anything that the staff of the NGA says.

Secondly, we think that the Act has been working. The Small Cities Block Grant is an excellent example of OMB's interference with agencies to make the regulations reduce paperwork and make the regulations work better.

HUD wanted 38 pages of regulations. We said that it was a brand new Block Grant. We did not want extensive regulations. We complained against HUD's regulations. We went to OMB. We went to the White House. We ended up with less than 10 pages of regulations.

We now use State laws and procedures to administer the Small Cities Block Grant. Local Governments and cities do not need two sets of regulations for most cases, Federal regulations, State regulations. They need the ones they are most use to and those are state regulations.

Local Governments like the way the Small Cities Block Grant is being administered and we do not know of any complaints against it.

Another area in which OMB assisted with the agencies is the implementation last year of the Uniform Relocation Assistance Act.

For 13 years, 13 different departments have issued separate rules and regulations for Uniform Relocation. It was absolutely incomprehensible to small business. The Governments were having a hard time adjusting to it and the persons most affected were the poor people who had to relate and bear the impact of these separate regulations.

We have worked with OMB and with Congress and when the Congress passed the Uniform Relocation Act amendments last year, we were able to get one lead agency, one set of regulations, and authority for States to be certified to entirely run that program.

We do not have any Federal officials running the Uniform Federal Relocation Act. It is an oversight responsibility. The State of New Mexico can be certified to carry out that Act for the United States Congress and it is working better than any time it has for the last 14 years.

In another effort with the Governors for the last 2 years by the Chairman of the National Governors' Association last year was

Governor Sununu. He had a three-folded approach on federalism, one of which was regulation reduction and simplification. He wrote a simple letter to every Governor and said, suggest one Federal rule or regulation that could be simplified. We got 400 suggestions from the Governors. Those were put together and blocked and grouped and we ended up with 103, which were submitted to President Reagan for action on terms of regulatory reform.

We tried our best to eliminate any that were statutorily based and to only deal with ones with conflicting regulations between departments and agencies.

There are six Congressional Committees dealing with underground aquifers. You can imagine how many are dealing with MEDICAID, AFDC, Food Stamps and all the other programs—employment and training programs for the benefit of the poor.

The primary focus of the regulatory reform effort was to make Federal programs work better for those at the bottom, the poor people. I have examples even from New Mexico if you would like to hear about that. I list in my testimony the six objectives of our regulatory reform effort. This was done in cooperation with the agencies and OMB. We do not find that—it is not an either/or situation in managing the Federal Government between the agencies and OMB. It is a both/and. Either one of them overstep or understep their bounds at any one point in time.

I list here an example of having to make them more humane. There are five different Federal regulations for the value of a vehicle. We have case studies of those which are tear jerking in terms of how clients are affected by these variant vehicle regulations, funeral expenses, lump sum requirements.

One of the regulations we thought was regulatory, but turned out to be statutory was the Foster Care Regulations. If you were in a foster care home as a teenager and you became pregnant, the foster home payments to you disqualified you for MEDICAID assistance. We brought that—when we found that was statutory, we brought it to Congress. Congress corrected that immediately and that is no longer an issue.

But it is those kinds of things that we bring up. In the regulatory reform issue we identified 19 separate rules and regulations for the same client on the same issue between the Department of Agriculture and the Department of Health and Human Services dealing with AFDC or Food Stamp regulations, conflicting rules and regulations.

That is why the Governors came to Congress and asked for Welfare Reform. Part of Welfare Reform is the flexibility to carry out Welfare Reform for the benefit of the client without undue and unnecessary and duplicative Federal rules and regulations.

We are in a battle now with the agencies and OMB and on May the 16th, 13 governors even brought this up before the President. We will support the congressional efforts for rules and regulations in Welfare Reform that give New Mexico and the other 49 States and territories the opportunity to make that program work for the benefit of the clients.

And if OMB gets involved too much or too less, or HHS too much or too less, we will go above them. We will go to the President and eventually come back to the committees of the Senate and the House to correct that.

I mention some of that in my testimony. Finally, we support the reauthorization of the bill. I list the four basic purposes of the bill. We think the goal of the bill is not information management. The goal of paperwork reduction and everything else is service, service to the people in New Mexico and the other—to let the Governments—the state and local Governments use Federal rules and regulations to carry out the programs in a most efficient way possible.

That is why we asked for another purpose to be added to the act and that is the utilization of state laws and procedures to carry out the purposes that Congress would like to have them.

I mention in here a few things about state Government. The Old "Good Time Charlies" of State Government are no longer there anymore. In 1987, State Government revenues—own source revenues apart from anything received from the Federal Government were $420 billion.

There is an interface between the Federal Government and State Government today that is massive and intertwined in every way that we operate.

The United States Census cannot operate today without the active upfront positive support of the Nation's 50 Governors. It is a voluntary system. It is like IRS without enforcement. We have to work with Census. The agreements between the Census Bureau and the states are critical to making that operation work.

We were involved in that hassle a little bit with OMB and Census because we need that information. We do not think OMB has a veto power over Census Bureau and we can intervene against OMB.

We do not think the Paperwork Reduction Act is tilted toward OMB. We think it gives the necessary interface of the Executive Office of the President against varying and conflicting and duplicating Federal department and agency regulations.

We have never had in my knowledge in the 22 years at NGA, conflicts with the Census Bureau

We go on to mention where States fit into the economies of the world. Twenty-three American States are in the top 50 economy of the world. The smallest State, Vermont's economy is larger than 112 member nations of the United Nations.

That is why we think that it would be—the act should be amended to utilize the laws and procedures in New Mexico as much as possible and they should be reauthorized.

How long should the act be authorized is your—Congress' decision. We have no preference on that. Anything less than 3 years creates—we think is too much. Most things ought to be able to run for 2 or 3 years at the most.

Oversight hearings are necessary. We will support those and we will be glad to participate in those.

Thank you, Mr. Chairman.

Senator **BINGAMAN**. Thank you very much.

We have another panel to come on after this. I will just ask a few questions before dismissing this panel.

Mr. Bass, sir, is it your suggestion that Congress do a shorter reauthorization than the 3 years? Do you think that is an essential trigger to get attention to these issues on a more regular basis?

Mr. **Bass**. Mr. Chairman, I think it is essential to reauthorize at a shorter period. I think we need not sensationalize much of these issues and that has been part of the problem. Everyone becomes polarized on all the issues.

And the reason for that is that we wait every 3 years and in fact, it is not every 3 years because in 1984 we did not get a reauthorized bill. We had to wait until 1986.

The key is to set some kind of consistency here, some kind of ongoing process so it is not combative, so that it is supportive and that we can fine tune when fine tuning is needed.

So reauthorization on an ongoing short term basis is essential. I must also say that the concern that Mr. Plager brought up about—he implied that it is difficult to get good employees and seemed to put that in the context of reauthorization.

I think that concern would not be as great if Congressional oversight was ongoing with short term reauthorizations. If there is a fear right now among potential and existing employees, it is becuase there is a tremendous uncertainty after what happened in 1986 with the House effort to de-fund OIRA.

We do not need that. We need an ongoing steady process. Employees would not have to worry. It would be handled well.

Let me also comment one other point here. I believe it is section 3520(b) of the act, makes it very clear that if no funds are authorized for appropriations this year, the act stipulates that no monies can be used to carry out any purpose under the act. That seems to go against the comment from Mr. Plager earlier in which he indicated OMB could use general support appropriations to carry out the functions of the act.

Senator **Bingaman**. Mr. Doniger, your organization, I gather, has been involved in the issue of OMB's promulgation of six proposed regulations on emissions controls and standards for disposal of hazardous waste, that is an issue that has been discussed in the National Affairs Environmental Reporter,[1] and also was the subject of some of the hearings over in the House side as an example of where OMB did not act in a proper way with regard to regulatory review.

Could you flush that out a little bit, give me your views on that example.

Mr. **Doniger**. Well, I am not familiar with the details of those examples because my—I have other colleagues who work in the hazardous waste area. I would be happy to submit something for the record on that.

I can tell you that from my own experience, I have been involved in a number of deadline suits and the organization has been involved in a number of deadline suits, others have too, where it is purely and simply the reg review process that is holding up action beyond statutory deadlines.

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[1] Further information may be found starting on p. 404.

That is about the only case we can win though against the OMB process the way the laws are structured now: Where the Clean Air Act or one of those laws has a flat out deadline which has been breached.

Obviously, we value the protections that are in those laws, but they are not sufficient to stop the problems that I have pointed to.

Senator **Bingaman**. So you are saying that we need a generalized statutory time limit on this review if we are going to have a basis for holding OIRA to a better standard.

Mr. **Doniger**. I think that is right. Executive Order 12291, for example, states that there is a 60-day limit for review of a proposal, 30 limit for review of a final, so forth. But then it states that the desk officers in effect can extend those limits indefinitely. So they are meaningless time limits. I believe, as I said, that the reform should include removing the regulatory review function from the budgetary agency, but even short of that, there should be a strict time limit and it should be at the public comment period phase.

Senator **Bingaman**. Mr. Martin, did you have a view as to whether we ought to legislate a time period that they would not have authority to just waive?

Mr. **Martin**. I will go back, Mr. Chairman, when I commented that the purpose of all this is service and not information. Information is very important and it has to be accessible, it has to be available. It has to be certainly sent to depository libraries and kept up with the information technology today and there is ways to make that information more accessible and available, certainly.

But the 60-day review, we have asked for extensions of reviews, the Governors' Association, for several things. And if the 30 and 60 days is designed—is that designed for people in Washington, or is that designed for the people in New Mexico? And can they cope with the 60 days?

We think they need a minimum of the 60 days and certainly not anything less for the people outside. For the Governors' Association to get our information back to the States and back, it takes at least that much time and we need the flexibility there. We do not need stringent——

Senator **Bingaman**. I can understand your point about how in some parts of the country to get adequate comments you might need more time, but what is your view as to whether there should be some time limit which the agency itself, OIRA, could not waive at their discretion?

Mr. **Martin**. Well, I can understand some time limit. I think that if you do put a time limit in, you need to give some appeal process one way or the other and I think a gentleman earlier asked for an appeal process. Appeal processes usually work. You need a way out.

Senator **Bingaman**. Mr. Doniger?

Mr. **Doniger**. Senator, I think Mr. Martin and I are discussing two different phases of this process. He is concerned about time limits for public officials to comment on those things on which an agency asks for comment. I share his concern that sometimes 60 days pinches people, particularly when they do not get the Federal Register notice for the first 25 days or so, practically speaking.

I am talking about the length of time that, in secret, OMB can hold up a rule, review it, and ask for changes, not in a dialog with the public, but in a secret dialog with the agency which is trying to get done the job that Congress has assigned it.

Mr. MARTIN. How much longer do you want? Another 90 days?

Mr. DONIGER. No, I want them to be limited to 60 days to put their views on the record in the public comment phase and then the rule can go forward. So that your Governors' views and my citizens' views can be put in the record at the same time as OMB's views and we can all see what each other is saying and comment on merits instead of on the basis of who holds better cards.

Mr. MARTIN. Ninety days for asbestos may look good on paper, Senator, and Mr. Chairman, but we have been in this battle since 1980 with deadlines and you cannot resolve some of those things in 90 days and the comment period will continue.

Senator BINGAMAN. We have a whole series of other questions that I would like to get answers to on the record, but we are running short of time.

I appreciate very much this panel's testimony.

Let us take a 2 minute recess and then we will start with the third panel.

[Recess.]

Senator BINGAMAN. Let us go ahead and proceed with the third panel. This panel will give their views on the issues of paperwork reduction, Government forms and Government regulation of business.

We have five individuals here, I gather; Mark Richardson, who is the Executive Director of the Business Council on the Reduction of Paperwork; Mr. Gerry Graff, who is with Graff Flooring, representing the American Subcontractors Association from my home State; Carol Miller, the vice president and director of human resources with Lancaster Laboratories, Inc., representing the U.S. Chamber of Commerce; and, Richard Patterson, the government relations manager at Dow Chemical, representing the National Association of Manufacturers; and, Dr. Earl Hess, who is the president and founder of Lancaster Laboratories in Lancaster, PA.

We are very pleased to have you all here. Why don't we try to take you in that order, if we could.

Mr. Richardson, why don't you go first.

Senator HEINZ. Mr. Chairman, could I just——

Senator BINGAMAN. Oh, excuse me. Go right ahead. I did not see you, Senator Heinz.

## OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Could I just join you in welcoming our witnesses. I am particularly privileged to welcome, and I thank you for inviting them from Pennsylvania, Ms. Miller and Dr. Hess.

Ms. Miller, who is the vice president and director of human resources at Lancaster Labs, has a first hand knowledge of what paperwork burdens can mean to those in the business community; does she ever. And she also serves on the Industrial Relations Committee of the Pennsylvania Chamber of Commerce and she is the vice chairperson of the subcommittee on employee benefits, among her other many capacities. And in addition, she spearheaded the company's on-site child care program, which is receiving a considerable amount of attention on the Senate floor even as we speak, Mr. Chairman, and I hope we will hear more about her work as time permits.

I do, of course, want to extend another special welcome to Dr. Earl Hess, the founder, as you have said, of Lancaster Labs, which now has subsidiaries in Salt Lake and Houston, and who has received more awards than I can mention. Besides his current position as a member of the board of the U.S. Chamber of Commerce and chairman of its environmental committee, Dr. Hess was kind enough to mention he is coming to a seminar I am having on a variety of environmental issues in Philadelphia on the 28th of this month.

He is also a Director of the Pennsylvania Chamber of Business and Industry. In 1986, he chaired the Pennsylvania delegation to the White House Conference on Small Business. So his expertise is of particular interest to us, and I might add that for those and many other accomplishments he has been named both a "Distinguished Pennsylvanian" and a Business Leader of the Year.

[The prepared statement of Senator Heinz follows:]

## STATEMENT OF SENATOR HEINZ

I want to thank my colleague from New Mexico, Mr. Bingaman, for holding this hearing on the reauthorization of the Paperwork Reduction Act of 1980, and on Government information policy in general.

I want to take this opportunity to welcome two Pennsylvanians before the subcommittee this morning. Ms. Carol Miller and Dr. Earl Hess, from Lancaster Laboratories in my home State, are here today on behalf of the U.S. Chamber of Commerce.

Ms. Miller, the vice president/director of human resources at Lancaster Labs, has a first-hand knowledge of what paperwork burdens can mean to those in the business community. She serves on the industrial relations committee of the Pennsylvania Chamber of Commerce and is vice chairperson of the subcommittee on employee benefits, among her other capacities, In addition, Ms. Miller spearheaded the company's onsite child care program, a topic receiving great attention this week in Washington and of great interest to me. I hope to hear more about Ms. Miller's work in that area if time permits.

I also want to offer a special welcome to Dr. Earl Hess, founder of Lancaster Labs—which now has subsidiaries in Salt Lake City and Houston—and who has received more awards than I can mention! Besides his current positions as a member of the board of directors of the U.S. Chamber of Commerce and chair of its environmental committee, Dr. Hess is also a director of the Pennsylvania Chamber of Business and Industry. In 1986, he chaired the Pennsylvania delegation to the White House Conference on Small Business, and, for this and other accomplishments, has been named both a distinguished Pennsylvanian and a business leader of the year.

From their testimony, I would conclude that Ms. Miller, Dr. Hess and I share the belief that section 89 under current law is an administrative paperwork nightmare and cannot remain in its present form.

I have joined Senator Bentsen in cosponsoring S. 1129 to simplify section 89. I would like to in fact thank the U.S. Chamber of Commerce for their contribution to the drafting of my amendment to ease the part-time employee problems raised by section 89. Because of the chamber of commerce and many other businesses, I was able to get support for increasing the part-time employee definition from 25 hours to 30 hours per week during markup of the Bentsen bill yesterday.

I am pleased to report that one of the most positive elements of the Bentsen bill is that for those businesses like Lancaster Laboratories who went to the time and expense of complying with the current law section 89, they have the option of using the old law or modified law for the next 2 years. We did not want the bill to punish those businesses who had already gone out of their way to comply with the law.

I look forward to reviewing today's testimony.

Senator HEINZ. So I again thank you, Mr. Chairman, for your good judgment in inviting two of Pennsylvania's finest, not that the people from New Mexico or Washington or other places are not good too. [Laughter.] But we do have a preference for people from Pennsylvania, at least in Pennsylvania. Thank you.

Senator BINGAMAN. Thank you for that endorsement of your home State. [Laughter.]

Dr. Hess, we need to have one of those laboratories in New Mexico. When you are thinking of expansion, do not give too much attention to Salt Lake. [Laughter.]

Senator HEINZ. Do you think Graff Flooring would be welcome next to Armstrong Industries? [Laughter.] You might well be.

Senator BINGAMAN. All right. Mr. Richardson, we appreciate your presence here. Go right ahead.

## TESTIMONY OF MARK E. RICHARDSON, EXECUTIVE DIRECTOR, BUSINESS COUNCIL ON THE REDUCTION OF PAPERWORK, WASHINGTON, DC [1]

Mr. RICHARDSON. Thank you very much, Mr. Chairman.

It is a pleasure to be here. As you indicated, my name is Mark Richardson. I am executive director of the Business Council on the Reduction of Paperwork, otherwise known as BCORP.

We thank you for this Committee's invitation to comment on the reauthorization of appropriations for the Office of Information and Regulatory Affairs and we welcome the opportunity to work with this Committee and you, Mr. Chairman, to suggest areas of needed oversight attention.

BCORP is an independent, nonpartisan, nonprofit association. Our membership includes individual citizens, small businesses, Fortune 500 companies, universities, professional associations and industry wide trade associations. A list of our current membership is attached to our statement and I understand, Mr. Chairman, that will be included in the record.

Senator BINGAMAN. We will include everyone's full statement in the record. To the extent that folks can summarize them, that would help.

Mr. RICHARDSON. Thank you. I will summarize.

You have before you a very eminent panel and I would like to let them cover much of the material that they have become familiar with as they handle the problems day to day of paperwork in the business community.

Few people are fully aware of the immense amount of time that businesses and other members of the public have to spend complying with Federal paperwork requirements.

By our estimate, Mr. Chairman, it amounts to 13 billion hours a year. A fact sheet showing the calculation of that total is attachment 2 of our statement. Business' share of that respondent total is 8.2 billion hours, at a cost to the business of our economy of $330 billion annually.

In 1978, the Commission on Federal Paperwork calculated that the total cost of Federal paperwork may exceed $100 billion. Now

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[1] See p. 346 for Mr. Richardson's prepared statement.

11 years later, the cost to the business community alone is more than three times that amount.

Besides businesses, others heavily impacted by this staggering amount of Federal paperwork and its attendant costs are State and local Governments, universities, members of the agricultural sector, and individuals such as senior citizens who must deal with the health and care system and all of us as taxpayers.

The cumulative impact of Government information demands constitutes a significant cost to economic production and is, therefore, a major factor in the competitiveness of the United States in the international marketplace.

With the advent of the common market in 1992, it is itself cause for us to consider the total cost to our economy of Federal paperwork and how it impinges on our competitiveness.

This mushrooming paperwork burden vividly demonstrates the ongoing need to support and strengthen the management strategy underlying the Paperwork Reduction Act, which is aimed at finding the least burdensome way to fulfill the Government's vital information needs.

At your hearings earlier this week, Mr. Chairman, you have had a witness from the Department of Defense. In terms of understanding the true burdens of its information, collection and recordkeeping requirements, we can report to you that the Department of Defense is among the worst offenders.

The conclusions of a BCORP study of the degree of underestimation of the true burden by the various agencies is attached as appendix number 3 of our statement and two examples of recent Department of Defense paperwork burdens which reverse the understated as discussed in appendix number 4.

On a point that I know is of concern to this committee, let me report that we find that the quality of reliability of Government data has been decreasing, particularly in the decade 1978 to 1988. This is the result of the inverse relationship which exists between the amount of information requested on one hand and the likely response rate and quality information provided on the other hand.

Information has an economic value. That value should not be squandered. It is absolutely essential to our members, as it is essential to the welfare of our Nation that the data collected and published be accurate and be timely.

The emphasis that the Paperwork Reduction Act places on public participation and the Government's decisions about information demands upon the public is the single most important concept in the Paperwork Reduction Act.

Under the Act, the major responsibility for seeking comments and involving the public rests with the agencies. It is the agencies who are to provide Federal Register notices. It is the agencies who are to solicit public comments. It is the agencies who are responsible for providing initial estimates of what the burden of their paperwork requirements will be. And it is the agencies who are primarily responsible for obtaining and using outside comments and expertise in their decision making.

We strongly recommend that this Committee evaluate how well the agencies are fulfilling their responsibilities. Our experience shows that major improvements are needed in this area. There is a need to assure that agencies will open up their process to the public comment.

The greatest growth of new information demands upon the public is coming from new regulations whether it be Tax Reform, Immigration and Naturalization procedures, or disclosure requirements regarding the workplace or the environment.

Most regulations depend on data collections to monitor implementation and compliance. BCORP strongly supports linking regulatory review with information clearance and other information policy tools of the Paperwork Reduction Act.

We believe that separating information resource management from regulatory review would devastate the ability of the agencies of OIRA to minimize the burden of information requests.

In the eyes of the business community and of the general public as well, the paperwork burden and the regulatory burden are one and often the same. There is absolutely no way for these two burdens to be separated without doing damage to efficacy and to efficiency.

In summary, Mr. Chairman, we have a number of recommendations we would like to present to this Committee;

One, that the Office of Information and Regulatory Affairs within OMB be permanently reauthorized in order to prevent constant triennial reconsiderations;

Two, that OIRA should be encouraged to sponsor more public hearings than it has to date;

Three, that OIRA should be encouraged to apply in a more effective manner the PRA's provisions to the costly paperwork requirements entailed in the procurement process.

Four, that the OIRA staff should be strengthened and brought up to the level found by the General Accounting Office to be necessary to carry out its functions.

Five, that statistical policy activities of OIRA should be retained within OIRA, together with its other information policy activities.

Six, that OIRA should be instructed to give far greater consideration to the competitive impact of the many regulatory paperwork requirements currently being approved.

Seven, that agency clearance officers charged with the first line responsibility of preventing unnecessary, impractical or duplicative paperwork should be required to pass a training course conducted by somebody of knowledge on the specific requirements of the PRA.

Eight, that the desk officers at OIRA should receive training regarding the Paperwork Reduction Act and I should say that I am glad to see that the PRA Handbook has been recently developed by OIRA and I compliment them for that step.

Nine, consistent with the 1986 amendments to the Act, OIRA should report to Congress regarding the feasibility and means of enhancing public access; and,

Ten, finally, the Congress should insist consistent with sections 3506(c)(3) of the act and Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, on a paperwork impact review of all legislation sent to the floor, and provision should be made for relief from paperwork that proves to exceed the estimates given to Congress regarding that legislation.

Thank you very much, Mr. Chairman. If I may, I would like also to thank your staff for the help and cooperation we have had.

Senator **Bingaman**. Thank you very much.

I will have some questions of the whole panel after we hear from each witness.

Mr. Graff, why don't you go right ahead.

## TESTIMONY OF GERALD GRAFF, GRAFF FLOORING, REPRESENTING THE AMERICAN SUBCONTRACTORS ASSOCIATION, NATIONAL SMALL BUSINESS UNITED, ALBUQUERQUE, NM, AND SMALL BUSINESS LEGISLATIVE COUNCIL, WASHINGTON, DC [1]

Mr. **Graff**. Thank you, Mr. Chairman.

I am Gerry Graff, President of Graff Flooring in Albuquerque, New Mexico. Today I am representing the American Subcontractors Association, the National Small Business United, and the Small Business Legislative Council.

Combined, these groups represent nearly 5 million small businesses. ASA, NSBU and SBLC support permanent reauthorization of OIRA. We believe OIRA should be strengthened so that it can better achieve the objectives of the Paperwork Reduction Act.

We also believe the PRA has been a success, but there is still much to be done to stem the flood of paperwork, which is drowning millions of small businesses.

Let me give you an example of the rising tide of paperwork. Ten years ago, I had one full time person in the office. Today, I have two and a half. During the same 10 year period, salaries and office supplies grew from $18,000 to $43,000 a year, yet factoring in inflation, my sales are about the same.

I attribute most of the growth in the overhead to additional paperwork imposed by the Government. Let me give you a more specific——

Senator **Bingaman**. What period was that?

Mr. **Graff**. The last 10 years, 1978 to 1988.

Senator **Bingaman**. The last 10 years. OK.

Mr. **Graff**. Let me give you a more specific example. In 1979, I performed a contract for an educational building for the Veterans' Administration. The project file for this contract is about 1 inch thick.

I recently completed a similar contract on an outpatient clinic at Kirtland Air Force Base. That project file is here and it is 8½ inches thick.

On a recent private sector project three times as large as the Kirtland project, I have the file. It is about three-quarters of an inch thick.

In the private sector file is a one page invoice requesting payment. In the Government file there are 18 pages requesting payment from the Government.

This demonstrates well the burdens that are often generated by the Government. We do believe that the Paperwork Reduction Act does work. We see examples of its effectiveness time and time again, as noted in our written statement, but we think it can work better.

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[1] See p. 359 for Mr. Graff's prepared statement.

One of our principal concerns is with claims by some that the PRA does not give the Director of OMB the authority to intercede when an agency's substantive policy making responsibilities or authority is involved. Such claims force one to ask the very basic question, what paperwork requirements would an agency be creating that does not involve its basic mission? If one takes these claims seriously, then OMB has no authority at all.

In our opinion OMB cannot and should not tell an agency that it cannot meet its mission. However, OMB can tell and must tell an agency that they must meet its mission in the most effective, the most efficient and the most economical way possible.

The most telling example of the debate over OMB's authority is OSHA's Hazard Communication Standard. It is this standard which has led to the Supreme Court's review of the 3rd Circuit's decision in *The United States Steelworkers of America* v. *Pendergrass.*

Well, I do not think anyone, least of all me or the organizations I represent today, opposes the HazCom Standard or its intention of protecting employees. There could be no doubt that HazCom imposes an incredible paperwork burden on U.S. businesses.

For example, before the implementation of the standard, I had to purchase a toner for my office copier about every 3 months at a cost of $80 each. Since I began complying with HazCom, I have had to replace the toner every 6 weeks and it will not be long before I will just have to buy a new bigger copier just to keep up with the new requirements.

I would like to note too that I did not even need an office copier until 1983.

ASA, NSBU and SBLC urge the Subcommittee to clarify that OMB has the authority to determine whether an agency's proposed information collection and paperwork requirements are practical and necessary, and that OMB has the authority to direct that agency to meet its mission in the most efficient and economical way possible.

We also urge the Subcommittee to strengthen the public protection requirements of the PRA. One way to do this would be to approve a provision similar to the one added by Congress last year to the OFPP Act. This provision requires the Administrator of OFPP to respond within 60 days to a public request for a determination of whether a procurement rule is consistent with the FAR.

We think a similar requirement of the OIRA Administrator would make the agency more responsive to the concerns of the public.

One of the most serious abusers of information, collection and reporting requirements is Congress itself. Congress frequently passes new laws that impose enormous paperwork burdens with no consideration on the impact on individuals or businesses; witness immigration reform and the creation of the I-9, witness tax reform and the creation of a new W-4, witness section 89.

The Paperwork Reduction Act recognizes the Congress frequently is the culprit in the creation of paperwork. It explicitly charges OMB and the agencies with reviewing proposed legislation and submitting comments on the information collection and paperwork burdens to Congress.

Yet, neither OMB nor the agencies have initiated comments to Congress on the paperwork requirements of proposed legislation and Congress has not demanded such comments.

We believe Congress should demand that agencies comments on proposed legislation include a discussion of the impact on individuals and businesses of the legislation's information collection and paperwork requirements.

In addition, we urge this Subcommittee to assure that other Committees in the Senate comply with the Senate Rule regarding such information and be included in Committee reports.

In summary, Mr. Chairman, ASA, NSBU, and SBLC strongly support the permanent reauthorization of OIRA. Information collection and paperwork problems will not go away and the solution must be a permanent one.

All three of the organizations I represent today will be happy to work with the Subcommittee to strengthen the PRA and to develop procedures so that OIRA can perform its job more effectively.

We look forward to working with you, Mr. Chairman. Thank you.

Senator BINGAMAN. Thank you very much.

Next is Carol Miller, who is Vice President and Director of Human Resources with Lancaster Laboratories, representing the Chamber of Commerce, and, Dr. Hess, you are accompanying Ms. Miller. You proceed whichever way you would like at this point.

Dr. HESS. Thank you, Mr. Chairman. I would like to make a couple of introductory comments and then have Carol give the main body of our testimony.

Carol and I will be presenting mostly personal experiences in our business. In our formal statement, which you have, various other dimensions of the paperwork issue highly relevant to other small businesses are described.

There were incorporated with the help of the Chamber staff, who are in touch with a wide variety of small business constituents.

Accompanying Carol and me are three members of the Chamber's staff: Christine Russell, Director of Small Business Programs; Lorraine Lavet, the Procurement Policy Director; and, Mary Bernhard, Manager of Environmental Policy.

Wherein we from Lancaster will not be able to answer specific questions you might have, we can certainly get that information from these staff specialists.

Lancaster Laboratories is a professional services firm, which I established 28 years ago with my wife and one other employee. We now employ about 340 persons, not including the branches that were mentioned earlier.

We refer to our company sometimes as the free enterprise response to a high tech information society.

On the subject of Government imposed paperwork, I think we can contribute to your understanding of the burden being carried by many small businesses, and I want to make the point that wherein such burden represents an overkill in serving the basic purpose of a statute or regulation, we are forced to expend resources that could be otherwise allocated productively.

Such overkills certainly bear directly on competitiveness. And I might say that without our paperwork burden, we may be able to have that lab in New Mexico that you would like.

We have a scientific staff of which I am indeed proud, but equally important has been the development of a professional management team to lead our increasingly complex organization, made more complex partly because of our growth, but also because of ever-increasing Government regulations, which require more and more paperwork.

Carol, by reason of her function in managing human resource and legal matters for our company, is at the very eye of this paperwork hurricane.

While keeping abreast of her paperwork requirements, she leads one of the most progressive human resource efforts to be found in a business anywhere; and reference is already made to our on-site child care center as one of the evidences of that.

Not only am I proud to claim her as one of my vice presidents, but also as my daughter.

Senator BINGAMAN. That is a good endorsement from the boss. [Laughter.] Ms. Miller, please go right ahead.

## TESTIMONY OF CAROL MILLER, VICE PRESIDENT AND DIRECTOR OF HUMAN RESOURCES, LANCASTER LABORATORIES, INC., LANCASTER, PA, REPRESENTING THE U.S. CHAMBER OF COMMERCE,[1] ACCOMPANIED BY EARL H. HESS, Ph.D., PRESIDENT AND FOUNDER, LANCASTER LABORATORIES, INC., LANCASTER, PA

Ms. MILLER. Thank you for the opportunity to speak today. I appreciate the fact that the Committee is willing to look at the paperwork burden as it affects the viability of small business.

I want to go on record at the onset as strongly supporting the reauthorization and strengthening of the Paperwork Reduction Act.

As the daughter of the company's founder and president, I literally grew up in the business, holding part-time jobs in high school and starting full-time after completing college in 1981.

As in any small business, there is not a vice president for every area. So, in addition to my human resource responsibilities, I also manage the legal affairs of the company. This includes supervising an in-house contract specialist, who works full time to assure compliance with paperwork requirements, as well as coordinating the varied activities of our corporate counsel.

My purpose today is to give you a feel for the paperwork burden carried by a typical small business. There are paperwork burdens connected with almost every aspect of our business, but we have chosen to overview four areas. I will deal with three: Section 89 and ERISA, affirmative action, and procurement contracting complexities.

My father will describe the regulatory burden carried by our laboratory staff in qualifying itself to provide services in the environmental field.

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[1] See p. 376 for Ms. Miller's prepared statement.

Section 89: As standard practice, our company monitors new legislation and requirements carefully. When we learned that Section 89 would be implemented January 1st, we took this seriously and took all necessary steps to be in full compliance.

We incurred major internal and external expenses in order to comply by that date. Simply documenting that the employees know all the benefits falling under Section 89 and ERISA added 43 additional pages to our personnel manual this year.

Now that we have made the investment, it seems that Section 89 will have to be redone, which will cost us a lot more.

Section 89 was complicated enough to apply to one business, but when we were working to comply, we also had one joint venture and were in the process of establishing another.

These joint ventures fall under the affiliated service group rule. The equivalency tests were so complicated to carry out that we were forced to have one benefit practice for all three companies.

This does not make sense because situations differ in Lancaster, Salt Lake City and Houston. Headaches included having our Pennsylvania-based insurance company extend services to distant sites because local insurance companies did not offer similar packages.

ERISA also incorporates some of the affiliated service group rules. Lancaster Labs has worked for years to develop the financial health that allows us to introduce a 401(k) plan with liberal benefits and profit sharing.

Now we are required to give the same benefits to the employees of our start-up companies that have yet to make a profit. What does this do for employee morale?

Affirmative action: As an employer with more than 50 employees and a Government contract over $50,000, we are required to have a formal affirmative action plan.

In 1988, we expended approximately 600 hours of staff time preparing and facilitating an audit at cost of more than $8,500. Also, the audit required me to come back from maternity leave a month early, about which I was not happy.

The final paperwork package weighed 13 pounds. That is this blue notebook itself. The supporting documents weigh about 50 pounds. I brought only about one-tenth of them with me. I did not want to lug a box of information all over Washington.

In a human resource department of a small company this is a lot of paperwork. Our experience with this process was extremely negative. We pride ourselves in applying the spirit as well as the letter of the law in our equal opportunity efforts and have worked with human services agencies in our area to recruit and train minority and disadvantaged workers.

The auditor was not at all interested in good faith efforts, but extremely interested in nit-picking. For example, we followed the Department's written regulations and typed a list of employees beginning with the lowest paid and moving to the highest paid.

Our auditor preferred the reverse order, listing the highest paid first, which necessitated staff working overtime to retype a 50-page report.

Another horror story—we were asked to determine the availability of minorities within areas in which we recruit to match those percentages within our workforce.

Our contacts with 41 recruiting sources, including vo-tech schools, business schools, and science departments in colleges verified that getting that information is all but impossible, as such records are seldom available.

To add insult to injury, certain indiscretions of the auditor came to light after the visit and we are now engaged in a complex legal paperwork process to protect ourselves and employees from retribution by the Department.

Government procurement: We feel it is to the advantage of small business and the Federal Government to make it possible to contract with small business, but the complexity of paperwork is overwhelming at times.

In our small business we are forced to have one full-time contract specialist on staff simply to deal with legal aspects of these complexities.

First of all, the terms of the contract are contained in multiple pages of boiler plate. They often commit us to conditions that are bone chilling and for which small businesses can ill afford the risks entailed.

At times we are forced to sign the contract and pray that nothing goes wrong. In some contracts the bid requires us to offer our basis for establishing the bid price, including salaries, cost of overhead, et cetera.

In offering a bid, we also agree to have a Government auditor go through our books. Beside the headache, we are concerned that that auditor may be working for our competitor next month.

Before leaving the subject of procurement, I would like to comment on the subject of procurement integrity, as discussed in our paper.

We would only underscore here that we support the concepts, but feel that the auditor's estimate of the paperwork burden is not realistic.

Dr. HESS. I would like to conclude then by giving you an example with respect to laboratory function. It may surprise you to know that no common system exists that permits a prospective client of mine to determine if our analytical data are trustworthy.

The Safe Drinking Water Act of the early 1970's gave general guidelines for qualifying laboratories for environmental testing and then passed that responsibility on to each State as part of the whole primacy package.

Guess what happened? Each State did its own thing, and each thinks its program is better than its neighboring State so that few grant reciprocity.

Thus, in order to do business in a number of States, we must undergo separate duplicate accreditations. Indeed, the paperwork accumulates because of misguided Federal policy, but that is just the beginning.

Such accreditations only cover drinking water. Therefore, when EPA needed to qualify laboratories for hazardous waste analysis for Superfund, it started from scratch.

Time does not permit me a full description of the Contract Laboratory Program [CLP], as it is known. Suffice it to say that it is not an accreditation program, but yet it is. In the absence of any other program, it is considered by our private clients to be a de facto accreditation.

Thus, CLP contracts are sought not for profit, since most are bid below cost, but for credibility in the commercial marketplace.

It is not unusual for a CLP lab report to have 100 to 300 pages —and I have seen them up to 3,000—as compared to what would otherwise be a two-page report. Then only partial payment might be received from EPA for services rendered because of trivial deviations in dotting i's and crossing t's.

The laboratory cannot bolt the system. Its national reputation depends on a CLP status. We presently have 5-full time persons working in a large lab converted to a paper factory to generate what are called data packages. These are now being required by several States and many commercial clients because EPA has set that standard.

The sad part of this whole process is that a well-run laboratory with a good QA system in place has to collect such supporting documentation and archive it so that data verification can always be done if in rare cases such is necessary.

Our company and our trade association, the American Council of Independent Labs, has worked for years to promote a nationally recognized laboratory accreditation system that is technically sound, yet, without the mountains of paperwork.

And I want to point out that the State of New Mexico has been the first to accept that private sector program in place of its own drinking water program, and I compliment you for that.

There is another environmental issue that does not impact me directly, but I think I need to mention it because it does impact many small chemical manufacturers. It centers on Title III of the SARA Act of 1986, Section 313, dealing with toxic release inventory reporting.

Conceptually it is fine. It requires the user of any quote, "toxic chemical" to provide an accounting of what happens to it after it comes into his possession.

But recently I sat among a group of major manufacturers and observed the confusion in their minds as to what was expected. I really have to empathize with a small business person who lacks the in-house technical or legal expertise.

I would like to conclude by emphasizing the bulleted points made in the summary section of our formal testimony, page 15, and add one personal observation.

We are not here today to plead for release from our adherence to responsible business practices. Nondiscrimination, all areas of employment, procurement integrity, environmental stewardship are all responsibilities which need to be carried by those who would lead a business.

What frightens and frustrates us is what Government bureaucrats do to these concept, by the time they become regulations and we encounter them.

We appreciate this opportunity to express our views.

Senator BINGAMAN. Thank you very much for that testimony. We appreciate it.

Mr. Patterson, you are our final witness on this panel. We are glad to have you here.

## TESTIMONY OF RICHARD M. PATTERSON, GOVERNMENT RELATIONS MANAGER, DOW CHEMICAL, U.S.A., REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, DC[1]

Mr. PATTERSON. Thank you, and I imagine at this point you are saying, Thank God. It has gone a little long and I welcome the opportunity to be clean up batter.

If you would not mind, rather than go into a long formal statement, I would like to give you some personal observations.

Due to some of my involvement in the Paperwork Reduction Act, and these go back to 1974 when I first got involved with the regulatory reform effort, first on the behalf of my employers and continued that participation through extensive involvement with NAM.

We were hoping that we could bring some discipline to the flood of regulations that were flowing out of the extensive legislative efforts that were going on in the late 1960's and early 1970's.

These regulations were putting substantial compliance costs on the private sector without much regard to the effectiveness and especially the cost effectiveness of the regulations, and a noteworthy part of these costs was paperwork.

This appeared to be a squandering of the country's finite resources. And then, as you know, in the mid 1970's, thanks to Senator Lawton Chiles, Representative Frank Horton, and others, there was a recognition that one of the contributors to this squandering of our finite resources was mountains of paperwork and, thus, the Paperwork Commission was established.

Members of NAM participated to their utmost to provide information to the Paperwork Commission, hoping that the recommendations of the Commission would result in some rational control of the paperwork burden.

As you know, one of the recommendations of the Paperwork Commission resulted in the Paperwork Reduction Act of 1980, which we are here to discuss today, which established paperwork budgets, targeted specific reductions in paperwork, and established a management mechanism for new and existing paperwork requirements using OMB as that management mechanism.

This led to the establishment of the OMB Office of Information and Regulatory Affairs, and we viewed this as a major step toward getting some control of the burgeoning paperwork requirements of the Federal Government.

We had great expectations, but it was not long before our great expectations turned into great disappointments when we encountered the resistance of the Federal regulatory agencies to the letter and the spirit of the Paperwork Reduction Act.

In fact, some of the regulatory agencies, specifically Treasury and the U.S. International Trade Commission, attempted to be exempted from the Paperwork Reduction Act so that they could continue in their same old ways.

In spite of the overall decrease in the paperwork reporting burden that was discussed earlier, there have been anomalies from year to year, and in fact, in fiscal year 1987, we saw an 8 percent increase over fiscal year 1986, and I think if you look at the record, you will find certain sectors of industry have found their paperwork burdens burgeoning rather than reducing and if you look specifically at the chemical industry, it is a good example. One of these was alluded to here a few seconds ago is part of Title III of SARA.

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[1] See p. 391 for Mr. Patterson's prepared statement.

There are three or four good examples I could give you of some of these problems, but in the interest of saving some time, let me just summarize three. The examples involve three agencies, EPA, the International Trade Commission, and the General Services Administration, but all of these paperwork requests had the same four things in common. They were ill conceived, poorly thought out, and the end result was they were extremely costly with which to comply and in all three cases the end result was counter productive.

Senator BINGAMAN. What is the timing of these four requests you are talking about?

Mr. PATTERSON. These are in the last 2½ years. The earliest one was from the U.S. International Trade Commission, 2½ years ago, their survey of the petro-chemical industry, which is a horror story in itself. The last one came from GSA and was a published rule in the Federal Register in April of 1989. So I just took these three examples. I can give you the details, if you would like.

But in conclusion, it is my personal view that the U.S. industry, if it is to become more competitive in domestic and international markets, we must look to Congress for help in reducing this squandering of our finite resources.

And it is for this reason that we seek the reauthorization of the Paperwork Reduction Act with the following recommendations:

One, that the Office of Information and Regulatory Affairs, as the review and management organization for the Paperwork Reduction Act, be reauthorized for 5 years rather than the existing 3-year period;

Two, that the regulatory agencies be required to review their paperwork requests before they are submitted to OMB to assure their conformity with both the letter and the intent of the Paperwork Reduction Act;

Three, that the OMB regulation requiring that each agency print on each form an estimate of the burden hours necessary to complete the form be made a statutory requirement; and,

Four, that if Congress, and especially the U.S. Senate, is really serious about improving the competitiveness of U.S. industry, that the Senate requires the reporting committees of the Senate to comply with Standing Rule XXVI, Paragraph 11(b), which requires the evaluation of the direct regulatory impact of the report and this includes paperwork, and to disclose such information in that report.

As an example, I have got here the Senate Report on the Tax Reform Act of 1986. The actual contents of this report are 1,116 pages. On page 1,117 and about one-quarter of page 1,118, the Senate summarily deals with the impact on private and public individuals and that gave an extensive act very short shrift; one and a quarter pages for 1,116 pages of report.[1]

We strongly recommend that you enforce Rule XXVI.

Thank you very much. I will be more than happy to try to answer any questions you may have.

Senator BINGAMAN. Thank you very much.

Let me start with Mr. Richardson. I will just have a few questions here. Mr. Plager's testimony about the very substantial progress that has been made in reducing paperwork during the last 8 years seems to be contrary to a lot of the testimony that I am hearing from this panel.

Mr. Graff did not seem to experience a major reduction in his paperwork burden. Mr. Patterson did not indicate he did. Ms. Miller and Dr. Hess did not indicate that, and I do not think you indicated it yourself.

What is your assessment of whether there has been a reduction? We just got a letter from Mr. Plager this last week saying that, "We are very pleased to report that in 1988, we reduced the information collection requirements in the previous fiscal year by 5.7 percent."

Do you think this is happening, or is this merely smoke?

Mr. RICHARDSON. My understanding of how OMB arrives at their figures is that they take the existing paperwork as it existed at the beginning of a year and measure any reduction they feel they have been able to accomplish on that existing paperwork at the end of the year.

Any additional paperwork, new legislation, that type of thing that comes along which brings with it additional paperwork, they do not count until the beginning of the next year. It then becomes part of the existing package and they can measure.

On that basis, and using BCORP's figures, we have seen basically an accomplishment which is difficult to check, but we assume to be correct.

There maybe a 5 percent cut each year on existing paperwork, but you have to look at the total paperwork picture and that has been growing since—at least since 1981 where we begin to get meaningful figures.

That has been growing at a compound rate of maybe 8.2 or 8.3, sort of a 9 percent figure is you just sort of divide the——

Senator BINGAMAN. I guess I do not understand. You are saying that something is dropping by 5 percent a year, but something else is growing by 8 percent compounded annually.

Mr. RICHARDSON. That is what I am saying.

Senator BINGAMAN. What is dropping and what is growing?

Mr. RICHARDSON. What is dropping is anything that may have existed at the beginning of that time. What is growing at a much more rapid pace is the new paperwork that is being put into existence in each of those years.

Senator BINGAMAN. So you are saying that the letter from Mr. Plager and his indications that they are doing well in reducing paperwork, does not take into account any new paperwork requirements being imposed by statute or agency?

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[1] See p. 439.

Mr. RICHARDSON. That is my understanding. It does not take it into account until they begin to measure again at the beginning of the next year where, if they make any reduction, they can measure their reduction, but they are not measuring per se their reductions against new paperwork that has been put into existence until—it is being measured the following year.

I probably am not the best one to answer this question.

Senator BINGAMAN. Does anybody else have a point of view on this?

Dr. HESS. Let me illustrate. Section 89 would not have been under consideration before this year——

Senator BINGAMAN. Why would it not?

Dr. HESS. Because it was not effective.

Senator BINGAMAN. Well, I know, but I would think that in order for OMB and OIRA to have any kind of meaningful measurement of the extent of the paperwork burden, they would start with a base and they would either go up or down from that base depending upon whether there was more burden or less burden.

You are saying that they do not do that, that they just measure when they go down. They do not measure when they go up? Is that what you are saying?

Dr. HESS. I do not hope this sounds personal, but basically I think that the Office is saying that we are working on existing regulations and systematically reducing them, but then Congress comes along and passes a new statute, such as section 89, that is not under our control, so there we go up again!

So the net effect to small business is a net increase, a slight decrease, and big new additions. And I think that——

Senator BINGAMAN. Well, I do not know. We should ask Mr. Plager this, and we will in writing, but I think if they are saying that all they are measuring are the decreases and that increases that are required by statute or otherwise are not in any way factored in, then I think this whole thing becomes pretty specious.

Dr. HESS. I think that is exactly what he is saying. He probably would respond that you, as Congress, were responsible for the new regulations and, therefore, I did not have a basis to do something about that.

Senator BINGAMAN. I had not noticed this before. It says in this letter, "In fiscal year 1989, the executive branch expects to achieve a reduction of 51.8 million hours in previously existing collections and will add new information collections of 38.5 million." [1]

So he is claiming that they are doing both. They are measuring the decrease and they are measuring the increase and we are coming out ahead 5.7 percent. He says, "We are 5.7 percent better off this year than we were last year."

Dr. HESS. That is not the way it feels down on the farm.

Senator BINGAMAN. You all do not see it that way?

Mr. RICHARDSON. If that has happened, Mr. Chairman, this is the first year it has happened in the last 8.

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[1] See p. 441.

Senator **Bingaman**. I see. You have not experienced this great benefit that was alluded to.

Dr. Hess, as I understand it you suggest that part of the problem is the proliferation of requirements state by state on the accreditation of your lab for checking drinking water. Mr. Martin gave us testimony on behalf of the Governors' Association that we ought to keep the Federal Government out of this area and let the states decide what standards to apply. Your two viewpoints seem to be directly contrary. Maybe I am not doing justice to it, but do you have any comments in response to his general idea that the States ought to be allowed to go ahead and govern in these areas?

Dr. **Hess**. I am certainly not a proponent of a bigger and bigger Federal bureaucracy, but I think that there are those responsibilities of the Federal Government wherein State regulation is simply inappropriate—where a thing is of national concern—that needs to be taken into account.

And I think that EPA now is seriously looking at the possibility of having to withdraw the State freedom so as to be able to take care of the mess they created.

Senator **Bingaman**. Does anybody else have a comment on that?

Mr. **Patterson**. Only one, aquifers do not respect State boundaries.

Senator **Bingaman**. So that is a general endorsement of the idea that these regulations, to the extent that they are promulgated, should be national.

Dr. **Hess**. I think that when we get into issues like, for example, acid rain, global warming and things like that, we are no longer dealing with States or municipalities. We are dealing with this country. We are dealing with the world. And in those respects where the thing has national or global significance, it is the responsibility of the Federal Government or world governments to cooperate.

Senator **Bingaman**. One final question, I think all of you have indicated you wanted either a permanent reauthorization or a 5 year reauthorization, long term reauthorization, but you would also like Congress to be more involved in oversight.

It seems that whether we like it or not, the demands on the Congress are such that we respond to the squeaking wheel. We are having this hearing today because the authorization of this bill is running out and we need to reauthorize.

Is it realistic to think that Congress will institutionalize a more regular and more aggressive oversight if we do not have the need to do so by virtue of the authorization expiring?

I do not know. That is just a very practical question about the way we do business around here. I am just telling you that next year there will be some other bills that need to be reauthorized and we will be having hearings on those.

We will not be having a hearing on this bill again for a substantial period of time. We can have oversight hearings of the Office, but Congress does not have a very good track record of just overseeing branches of Government when there is no need to review the legislation and revise it.

Yes?

Mr. **Patterson**. Senator Bingaman, if you would, please, let me make a comment, respond to this. I think more frequent—let us assume that we are talking 5 year reauthorization, just to pick what NAM is recommending.

I think there would be two benefits, and if you want squeaks, we can get them for you. There is no question about that. But I think really the point in the whole thing, at least from my perspective, is frequent and let us say annual Congressional oversight, Senate oversight, of the Paperwork Reduction Act might help Congress understand what they wrought in some of the legislation. There would get a better handle on the cause/effect relationships that are coming out of Congressional legislation.

Title III of SARA is a perfect example. Form R that came out of that is a document that literally is about a quarter of an inch thick, is so darn complicated and so long that probably more than half of the sites that were anticipated to respond to Section 313 of SARA did not.

The smaller companies looked at that, said, "Oh, my God, I do not have this information. I do not have the people to collect it," and they either ignored it or did a very sloppy job of filling it out because they did not know any better.

If Congress was more aware of these things that were going on, maybe the requirement of Standing Rule XXVI might be adhered to a little more frequently.

Senator **Bingaman**. I do not disagree with you, but we have a 3 year authorization now and as a practical matter, there has not been a lot of Senate oversight of this bill in the last 3 years.

If we do another 3 years, is it likely that we will do better? You, as a panel, have testified uniformly that there has been no reduction in paperwork; that it has increased and increased to a significant degree. And that is not consistent with the Executive Branch's claim that they have reduced paperwork very substantially every year for several years, and Congress has probably been feeling pretty good about it too because all the reports we get back say everything is great and getting better.

So I just do not know that doing a 5-year reauthorization is going to move us toward accomplishment of the oversight objective that you are advocating.

Mr. **Richardson**. Senator, may I comment on that?

Senator **Bingaman**. Yes, please.

Mr. **Richardson**. I have a feeling that—forgetting for the moment whether it is permanently reauthorized, 5 years, or not reauthorized at all, if you think in terms of the role that this Subcommittee can play and the existence of this Subcommittee and the way in which I have seen you look into the whole pile of various issues that touch upon it, I think that this Subcommittee will be an active one and show a real interest in this issue and hold oversight hearings on a basis that seems appropriate, whatever that may be, and I would not be surprised that it was more than once a year.

I think that the whole reauthorization issue takes on a different context and I would hold, because that is the position of our group, that it could be permanently reauthorized.

I personally was persuaded by the position you took on the reauthorization of OFPP within OMB. I do not know that it is necessarily analogous, but I think that the more important thing, in our opinion, would be the oversight committee by a committee interested in the issue and moving towards an opportunity for all those affected by the Paperwork Reduction Act to have a chance to express what they are experiencing under the act.

Senator **Bingaman**. Well, we have run over time about a half hour here.

I appreciate very much all of the testimony. I think it has been a useful hearing and we will take it into account as we take action on this Act.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee adjourned, subject to the call of the Chair.]

# APPENDIX

Testimony of
JOHN DIEBOLD

Chairman, The Diebold Group, Inc.

Government Information and Regulation Subcommittee

United States Senate Committee
on Governmental Affairs

Washington, D.C.

June 12, 1989

Thank you for the invitation to testify before this Subcommittee on Government Information and Regulation.

You have asked that I address the nature of the ongoing information revolution and its implications for the federal government with particular reference to opportunities both to use information technology and to aid in the development of that technology.

In responding to your request I believe it may be most useful if I begin with a few observations on information technology and the direction in which it is headed. I will then comment on the role of the federal government in the use and development of this technology and the conditions important to achieving its inherent potential. I will then conclude with a few remarks on the managerial and organizational implications of managing this technology in the federal government.

## I. The Information Environment of the 1990's

Information technology is changing our world. While it continues to make possible more efficient operations and improved support services, it has begun to change the terms of competition in more and more fields and, in doing so, it directly and importantly affect U.S. economic well being. The problem for the gbvernment is thus twofold: how best to utilize information in government operations and how to set policies which foster not only the maintenance of U.S. leadership in the technology itself but especially in its application.

Let me begin with some comments on the nature of this technology and how it is changing our world.

Thirty five years ago when the first electronic digital computer was installed for corporate management purposes (as distinct from scientific computing and military applications which had characterized the first decade of electronic computers) I suggested that the implications might best be thought of in terms of three stages. In exploring the array of policy options before you, you would do well, I believe to look at these various stages of change that any new technology brings to society. My construct of technological change was and is this:

-- The computer would first change how work is done.

-- Second, the computer would change what work is done.

-- Third and most importantly in this context, information technology would fundamentally change the society and the environment in which one works -- this last change has utmost consequences for both public and private organizations

Today, we are well into the third stage of change brought about by information technology and this has everything to do with the policy options we identify.

I think it is useful to step back a little, and focus on the question of what is information technology, to look at where it came from and where it is going. It is really the combination of two things, computers and communications.

Some pioneering work was done in the 1930's and 1940's by people like John von Neumann at Princeton, Alan Turing in Cambridge, England, Claude Shannon at Bell Labs and Norbert Wiener at MIT, a small group of people who were interested in the theoretical nature of information and communications.

It was these theoretical insights and the development of a theory of information, linked with the emergence of electronics, that enabled us to build machine systems to process, store and communicate information in any way we wished. This came about in a very short period of time in the thirties and forties, and the emergence of computers as we know them began in the forties, but there was not any proliferation until the fifties.

Since that time, the power and speed of computers have steadily increased while the costs have decreased. The faster and cheaper it is to do calculations, the easier it becomes for the average human being to use the machine, because we can make the machine more and more sophisticated at even lower cost.

We are entering a period now where computers are able to recognize individual speech and respond in a human-like voice, while the graphic capabilities are continuing to improve. And now, to an increasing extent, information technology is merging with developments in neurobiology, opening the possibility of computers connected with human nervous systems. Thus the material improvements are expanding the use of technology while changing our entire societal infrastructure. These are some trends likely to characterize the next decade:

-- The cost of communication will continue to rapidly decline -- by one estimate communication costs in the 1990's will be 1/20th of today's -- making it easier to communicate complex information

-- The ability to convert all manner of words, images and sound into computer data will become commonplace making possible such technologies as interactive videotex combining color, 3-D motion pictures and sound

-- Microelectronic technology may become integrated with biological processes making possible cell-sized computers able to reprogram damaged genes.

Let me just give some examples of the environmental changes taking place outside the federal government that will have a great impact on how agencies of all kinds are organized and staffed.

-- New communication paths

We are used to thinking of people communicating with other people and with machines, but many other communication paths are possible and are becoming more common. As new communication paths open between and among people, machines, buildings and a host of inanimate objects, new possibilities abound: buildings will communicate with people, other buildings or delivery vehicles; home appliances will communicate with other appliances; vehicles will communicate with roads, other vehicles and computer networks, all without human intervention.

-- Electronic Data Interchange (EDI)

Since most organizations that can use a mainframe computer now have one, electronic data interchange (EDI) now becomes feasible. Organizations will increasingly exchange data, voice and image transmission directly and eventually will even transfer funds without an intermediary. As more and more organizations require suppliers and contractors to be part of their EDI system and distribution network, the federal government cannot help but be affected.

-- Infrastructure Services

Infrastructure services will represent a large new industry segment involving massive projects. In many countries, telephone companies and new information services companies will converge and evolve into this new industry segment. These services will be provided by third parties rather than by users and will facilitate other activities in the economy. These may include basic Integrated Services Digital Network (ISDN), database services, transaction- based videotex systems, educational uses, universal security systems and entertainment.

An example would be a highway traffic control and collision avoidance system -- and here Europe is far ahead of the U.S.. A case in point is PROMETHEUS, the $875 million, seven year research effort started by Daimler-Benz, and now under auspices of EUREKA. Nearly all of Europe's car makers, 70 universities and 140 high-tech companies are taking part, jointly developing technology and setting standards. This system would combine sensors embedded in roads with an on-board "autoguide" that would suggest optimum routes, detect oncoming vehicles, and allow car-to-car communication.

During the 1990's changes in the information technology environment outside of federal government agencies will have broad implications for policy makers that go far beyond the Information Resource Management (IRM) function within federal agencies.

In other words, management of federal government agencies must increasingly focus on the ways in which the outside information environment is changing; how individuals and organizations will communicate and interface with the government; and, as well, what the role of government will be in providing an information infrastructure necessary to an advanced industrial society.

This new environment will change the way in which citizens, businesses and governments interrelate with each other -- from suppliers to distributors to citizens to government agencies. Many organizations in both the public and private sectors will find that the very nature and definition of the roles are being revised. And the demands of the new technological options raise profound questions about how we encourage technological development and speed its transfer, the manner in which we compete internationally, how we organize and staff our organizations, the way we make investment decisions and the way we plan for our future.

## II. The Role of the Federal Government in Information Technology Development

The federal government is in a unique position to continue to play a formative role in the development of this infrastructure and in the information technology which supports it, and has indeed done so since the earliest years of computer development. It may be useful to look at some examples of the ways in which the government has funded research and development, created demand for advanced applications and facilitated standards development that have improved commercial applications.

-- In the 1950's the U.S. Air Force air defense system SAGE contributed important advances in both fundamental commercial computing concepts and manufacturing practices. Computer graphics, time sharing, digital communication and the ferrite core memory have their roots in the SAGE project.

-- The National Security Agency's (NSA) funding for advanced logic and packaging technology resulted in advances leading to the development of the IBM System 360 in the early 1960's.

-- The federal goverment's role in standards development can be best witnessed in the development of the Cobol software language in the late 1950's. Cobol became and remains the de facto standard for business applications.

-- The Defense Advanced Research Project Agency (DARPA) has contributed significantly over the years to commercial, non-military developments in time sharing, packet-switched communications networks, artificial intelligence (AI), advanced computer architectures and advanced microelectronics. It was not until the early 1980's for example that commercial products using AI began to emerge from the laboratory some 20 years after DARPA's investment in the field began!

-- The purchase of high performance computers by the then Atomic Energy Commission (AEC) and the Department of Energy's (DOE) national laboratories was the backbone for the development of supercomputing. Researchers at Los Alamos Laboratories, for instance, developed the software for the first supercomputer.

-- The National Institutes of Health (NIH) has been instrumental in developing one of the most successful expert systems, MYCIN, for selecting suitable medication for patients with serious infections.

I mention these examples because I believe it is important that we not lose sight of the crucial role that the government plays and the instruments of policy that it has at its disposal through legislation, R&D funding, tax policy, procurement policies, etc. to advance information technology development.

As we continue in the information revolution, it seems to me that the role of the government might be thought of in three ways:

-- A. Computer and communications technology (which I believe should always be thought about as parts of the same technological development) provide a means of delivery of government services at increasingly lower costs and higher quality as well as providing ever newer ways of achieving the mission of the various government agencies.

Computer technology can, indeed, provide the basis for moving from the generally labor-intensive nature of public service delivery towards capital and technology intensive services. The technological innovation provides a principal means of improving productivity in the delivery of such services. Without full employment of technology in this process, the cost of these services is bound to continue to escalate, resulting in a great decrease in the range of quality and of services available.

The U.S. federal government has already taken good and useful steps in this direction. But whereas the private sector is learning to apply the new technologies to gain a strategic competitive advantage, the strategic management of information technology in the public sector similarly raises many policy questions which need to be addressed.

Nonetheless, the Paperwork Reduction Act (PRA) of 1980 provides a conceptual framework for Information Resource Management (IRM) which is an important step in managing information systems within the federal government and reducing reporting burdens on businesses and individuals. This act has had a strong and positive influence on the management of information in the public sector. Most importantly, I believe it has focused attention on the value of information and the importance of integrating information requirements and technology. Successful applications of information technology for which the Federal government should be commended include:

-- The Social Security Administration (SSA) is providing direct deposit through electronic funds transfer for many of its clients. In addition to the convenience afforded to the elderly, instances of theft, forgery and lost checks have been significantly reduced. Due to advances in computers and data transfer systems the SSA can make its data base available to employers allowing drastically improved customer inquiry response.

-- The Internal Revenue Service (IRS) is exploring several alternative methods for filing tax returns. By 1990 electronic filing should be available to all taxpayers expecting refunds and using preparers which is expected to result in reduced errors and improved return response rates.

-- The Department of Defense (DOD) Computer-Aided Acquisition and Logistics Support System (CALS) will enable and accelerate the integration of digital technical information for weapon system acquisition, design, manufacturing and support. It is expected that CALS could cut 20% off the $5 billion the Pentagon spends handling technical data every year.

-- B. Leadership in creating conditions that encourage the application of information technology to important new areas such as the development of societal infrastructure systems represents a major new opportunity for the federal government to aid in the development of these technologies. These infrastructure systems will represent a major driving force for economic growth for many years to come. They may well represent export opportunitiesas other societies experience the need for similar systems.

Examples of the societal infrastructure which will be crucial during the decade of the 90's, and in which the federal government could play a decisive role in determining whether the U.S. leads or lags Japan and Europe, include air traffic control systems, road traffic control both within cities and on federal highways, and the the advancement of education.

[redacted] A first class air traffic control, road transportation and telecommunication infrastructure will be vital to the long term economic health of our nation. Other societal infrastructure services will include medical services delivery to homes as opposed to hospitals- an area of major current research and investments. We may see government-to-business systems: for example, pharmaceutical companies might develop a network linked with government review agencies, to reduce the drug approval process.

In all of these area there will be interplay between the private and public sectors. I believe it is important to think out and debate soon the policies to be followed regarding public and private roles, if our coutry is to enjoy the benefits and necessities of such systems.

-- C. The federal goverment as well as business must confront, in the decade ahead, the increasing labor and skills shortage in the U.S. population apparent in demographic statistics. We are faced with an aging U.S. population, a decline in educational and skill levels as reflected in recent SAT scores, a decade of fewer new hires and a changing composition of the workforce. To offset these changes in the "human capital base" both government and business must make investment in people paramount and augment their skills with such technologies as artificial intelligence and "smart terminals".

Information technology can provide a real tool for overcoming the educational problems of our citizens by making possible more effective means of teaching through the use of interactive systems. These systems allow the individual student to move at his own pace. They are modeled on the cognitive habits of the individual; patient enough to ensure that each step is learned before progressing to the next or advanced enough to ensure the greatest challenge to the brightest student.

While individual school systems make innovative use of computer-aided instruction, much more needs to be done in educational, as well as software and equipment, research and development, if more than marginal benefits are to be obtained. Given the enormous capital, labor and material resources in our country shouldn't these advances be possible? Such applications in education represents one of the greatest challenges and potential for improving the intellectual skills of our society. Is this not an area in which public/private partnerships in the form of model programs could serve as a means of aggregating demand for the expensive R&D and software, as well, as new machine systems?

## III. Essential Conditions

To accomplish the foregoing, there seem to be two essential conditions:

The first of these is to facilitate an environment for the creation of demand pull for new applications and services. Trying to push technology through a system is like to pusing a string. I believe that demand pull can be created either through model programs or through privatization (for profit delivery of services based on private investment). I believe that either or both appoaches can be used. The federal government budget constraints would seem to me to indicate the usefulness of exploring methods of drawing on private capital through privatization. Whichever approach is used I believe it should be designed in such a way as to ensure that private capital is put at risk as a part of spending any government money. A few examples of privatization in the delivery of government information include:

-- Library services provided to NOAA and HUD by ASPEN, a timeshare system

-- Private marketing of information services

-- Land satellite data marketed commercially

These are progressing slowly and need to be pursued more aggressively if model and experimental programs are not going to be funded publicly.

The second condition required, I believe, is a coordinating mechanism within the federal government which would encourage a coherent policy across the goverment with respect to such issues as standards, procurement, funding of technology development and the like and which relate specifically to U.S. national objectives and international competitiveness. In this area advances in technology have clearly outpaced public policies. A necessary starting point is top-level government recognition of the vital role of information technology in our national and international economies. We should really examine the ways in which the U.S. policy process should be modified to ensure a minimum of conflicting purposes as they affect computers and communications.

What I am suggesting is not centralized control or regulation of the information technology industry, but rather a clearing away of the regulatory and other obstacles to technological innovation and a coordination of all disparate government policy mechanisms that are the outgrowth of historical traditions and that are not pertinent to today's realities. A good example of an area where coordination of national objectives and information technology policy is required is with regard to telecommunication policy.

U.S. policy in this area of new communications technology has been fragmented and to a large degree, it has been determined in the courts. Judge Harold Greene, who presided over the break up of AT&T, is now responsible for sweeping measures affecting the future of the U.S. telephone operating companies and on-line information services. Judge Greene is a very capable man but is this the way to set national policy in an area so fundamentally a determinant of U.S. growth and competitiveness?.

I would like to briefly address here the importance of the procurement process as a policy instrument. The role of procurement policy needs review. Let me state at the outset that I am acutely aware of the potential misuse and outright damage to an economy that can occur when procurement policy is used to exclude innovative and low cost technologies that could benefit our economy. Departure from free trade has always been hazardous but as Alexander Hamilton stated in his 1791 Report on Manufactures:

> If the system of perfect liberty to industry and commerce were the prevailing systems of nations the arguments which dissuade a country, in the predicament of the United States, from the zealous pursuit of manufactures, would doubtless have great force.

But, of course, they are not today any more than they were in 1791, and are in some ways less so.

Purchases of computers by the U.S. government have been from time to time , and usually unconsciously, the second major avenue--after R&D funding--by which federal policy has encouraged the development of the computer industry in our nation. Creatively and judiciously used, procurement policies can serve as a most important and powerful instrument in improving U.S. international competitiveness. Procurement preferences, for example, have been a very powerful instrument of policy in Japan and Europe in connection with both telecommunications and computers. In Japan, by far the largest share of government markets for supercomputers has been awarded to national producers.

In the U.S, federal government purchases of foreign hardware has, in the past, never been a serious problem primarily, we believed, because of the superiority of our technology. This, however, has changed. From supercomputers to portable computers, foreign producers are offering competitive products. While our economy may be best served by buying the cheapest equipment for a specific purpose, it might be wise to reconsider some of our fundamental procurement principles such as "commodity buys" versus the principle of "lowest life cycle cost and highest return on investment to the federal government".

In addition to the very important defense considerations relating to foreign suppliers in an unstable world, there are growing security issues relating to the maintenance of U.S. superiority in the information technology industry. Regular review of procurement policies with respect to national objectives would seem prudent. For example, it is my understanding that an order of five supercomputers would have made the difference between the recent closing of CDC's supercomputer division and the availability of private capital for a leveraged buyout. This would have kept together a large group of engineeers and scientists in a field of growing international importance and declining U.S. presence.

In thinking about potential roles for government help, the best U.S. example of institutional innovation and the greatest success story of American technology development and transfer is, interestingly, in the area of agriculture.

-- The transfer of scientific knowledge, through technology to practical application was a process started by Abraham Lincoln with the Morrill Act of 1862. The Morrill Act created an organized network linking universities and farmers. The Hatch Act of 1887 established agricultural experiment stations, and the Smith-Lever Act created cooperative extension programs in agricultural and home economics.

   These political and institutional innovations resulted in such an increase in agricultural productivity and efficiency that the percentage of the U.S. population engaged in farm labor fell from 40% in 1880 to only 3% in 1980. Today, agricultural exports sustain the U.S. in international trade competition. Few accounts of U.S. technological leadership mention this enormously powerful engine of agriculture. I am not advocating that we copy the agricultural model, but that fresh thought and political invention are needed.

The director of DARPA Dr. Craig Fields of DARPA has suggested the need for what he calls a civilian Strategic Technology Initiative with a National Technology Office that would monitor the international competitiveness of American products both on the market and under development, report on its observations for public debate, facilitate the formation of joint research ventures within American industry and serve as a custodian of the public interest in those ventures formed to carry out joint industrial research. Resembling a civilian DARPA it would be charged with stimulating long term investment in key industrial technologies.

## IV Managerial Implications of the Information Environment

Clearly, the federal government is constrained in more ways than the private sector in achieving dramatic changes in internal management practices required by the new information technologies. These are due, in part, to the budgetary process, the procurement process and agency reorganization policies. I would like to examine some of the broad implications of the changing information environment for management and organization in the federal government.

-- In a multi-vendor environment, the task of integrating systems will be more challenging.

-- Information technology and its applications are increasingly part of large societal infrastructure systems linking citizens, consumers, businesses, government agencies and other institutions and there are many sub-loops within those systems. The task of system integration becomes a hugely complex problem.

-- As more and more information systems are designed to serve multiple organizations, serious questions are raised.

There is the promise -- and the challenge -- of electronic data interchange (EDI) and new infrastructure services, as illustrated by my pharmaceutical/government network example. Increasingly, the government will interface with such systems. But many questions remain unresolved:

-- Which organization is responsible for developing systems that link two or more organizations?

-- Which organization is responsible for maintaining them?

-- Where within the organization do these development and maintenance responsibilities lie?

-- A basic issue is the question of building the human resources within the federal government to be able to deal effectively with these developments, addressing the difficulty that public agencies have in competing for personnel successfully with the private sector. These challanges raise serious questions not normally thought of as issues to be resolved by IRM. Although they cover much broader areas of concern than IRM, they pose several questions for IRM as well:

-- Who should be responsible for tracking how changes in the external information environment affect functions within the organization: Should it be the IRM department? Whether it be to IRM or to an end-user department, where the responsibility is assigned should be clear.

-- How should career paths be structured within goverment agencies to develop staff with an understanding of the information environment?

-- Should senior managers be rotated with IRM managers? Should IRM officers serve on oversight boards for strategy and planning? Should there be a chief information officer in charge of developing information resources?

-- The federal government needs information managers with the vision to grasp the opportunities that exist in the technological environment of the

1990's, who can understand not just yesterday's and today's requirements but tomorrow's as well. Where can the federal government seek out and locate such talent?

Questions specifically for IRM:

- What kind of incentives and career paths should be instituted for IRM professionals to prepare for their important new roles in meeting the various agency's strategic requirements?
- What new attitudes and outlooks are necessary and how can these best be cultivated?
- Does IRM staff have people with the know how and potential necessary to make significant contributions in strategic areas? Do they have the proper visibilty and incentives?
- How can IRM managers develop a consensus on the proper allocation of scarce resources between strategic and operational needs?

- Is a fundamental restructuring of the public sector necessary to reflect the demands of the information age? The required changes required by the new technology do not come easily, and are not the automatic result of top-level planning for the state-of-the-art technological advances. Instead, they require the participation of people at all levels in an organization and across organizations. Some conditions for strategic planning are important:
    - Management and all employees must be prepared to approach their own sphere of work and responsibility from a new perspective, one that attaches a high priority to the economics of information, not only in terms of traditional cost-benefit analysis but also in terms of service, quality and timing advantages.
    - Planning should be be based on a strategic concept of an overall model for information needs that allows for the encouragement of technological advances in information handling and the evaluation of their impact on the performance requirements of operating and functional units.
    - Fundamental changes are required in federal managers' perceptions of information as a valuable resource.
    - Incentives are required to support comprehensive long term planning.

While the answers to these questions are still evolving, senior managers in federal agencies need to grapple with the problem of developing an understanding and monitoring of the information environment, and to connect that understanding with agency strategy and management.

United States General Accounting Office

GAO

Testimony

For Release
on Delivery
Expected at
9:30 a.m. EDT
Monday
June 12, 1989

# Information Technology Utilization by the Federal Government

Statement of
Ralph V. Carlone, Assistant Comptroller General
Information Management and Technology Division

Before the
Subcommittee on Government Information and Regulation
Committee on Governmental Affairs
United States Senate

Mr. Chairman and Members of the Subcommittee:

I am pleased to participate in the Subcommittee's hearings on the reauthorization of the Paperwork Reduction Act. At your request I am focusing my testimony on the utilization of information technology by the federal government--specifically, the billions of dollars spent each year by the various agencies to acquire computer technology to help manage their work loads and to more efficiently meet their objectives. I understand that these hearings will consider, in part, the oversight and policy role of the Office of Information and Regulatory Affairs (OIRA) in the effective application of information technology. Our work has centered on agency management in this area and has not focused on OIRA. However, I believe our observations can provide a useful starting point for the Subcommittee's deliberations.

Mr. Chairman, the federal government early on assumed a leadership role in computer technology applications. Yet we find today that this leadership has slipped. Federal agencies are experiencing massive problems in acquiring and developing the systems necessary to manage government operations. Over the last 4 years, we have reviewed dozens of major systems, systems absolutely critical to effective agency operations, and have found very little positive to say about how these systems are being developed. Invariably, these systems do not work as planned, have cost overruns in the millions and even hundreds of millions of dollars, and are not developed on time. This condition is pervasive throughout the government.

Defining the problems and underlying causes is not simple. And the solutions will not be simple.

This morning I will highlight some of the most significant problems and failures we have seen to date, and provide an overview of why, in our judgment, such failures occur, and what initial steps can be taken to address them.

## THE STATUS OF INFORMATION TECHNOLOGY APPLICATIONS AND DEVELOPMENT

In reviewing the problems associated with the application of information technology, we must consider the environment in which the federal government operates. Government operations are characterized by long-term projects with short-term budgets, and rapid turnover of senior and mid-level managers who often refocus program priorities. In addition, many federal systems are massive and/or unique, requiring unusually complex solutions to very singular applications. The government spends about $20 billion each year on information technology and management, but I would be hard pressed to identify a single "mega-dollar" systems development project that could be used as a model.

Unfortunately, I can identify many systems that point to a disturbing trend. For example, our recent review of eight automated defense systems essential for effective personnel management, logistics, and financial management identified a pattern of cost growth, schedule delays, performance shortfalls, and evolving requirements that resulted in changes to development and acquisition strategies. Specifically,

--cost growth has been massive. Defense's estimate to develop and deploy the systems doubled, from $1 billion to $2 billion, with additional cost growth likely;

--the original completion dates for all but one system have been delayed by 3 to 7 years; and

--Defense did not consider alternative strategies, such as maximizing use of existing personnel and payroll systems, to avoid duplication and unnecessary expenditures.

Two of the eight systems, Army's Civilian Personnel System and Navy's Standard Automated Financial System (STAFS), were in such disarray that development efforts were abandoned. Navy found it easier to terminate STAFS, after spending over $230 million, than to risk another estimated $200 million to make the program work. Navy reported to Congress that the life cycle cost for STAFS was $184 million, while internal DOD estimates showed an estimated life cycle cost of $843 million--over four times greater than the official estimate.

We also found significant problems with the North American Aerospace Defense Command's (NORAD) $1.3-billion effort to modernize the critical systems that provide timely warning that North America is under air, missile, or space attack.[1] This system has been plagued by mismanagement. We found that

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[1] NORAD's attack and warning systems would be excluded from OIRA oversight under sec. 3502 of the Paperwork Reduction Act. However, the problems identified in these systems demonstrate the pervasiveness of poor systems development implementation throughout the government.

--there is no single manager below the Chief of Staff of the Air Force with accountability, responsibility, and authority for the modernization effort; rather, responsibility was fractured among 6 commands and over 200 directorates, boards, and working groups;

--the modernization of the Space Defense Operations Center (SPADOC) at NORAD--necessary to provide space surveillance and attack information on U.S. satellites--has been hampered by unrealistic expectations of the software necessary to achieve the systems performance requirements. As a result, the program is behind schedule and the system under development is so slow that notification that a satellite is under attack takes four times longer than specified; and

--severe software problems also hamper the development of the Communications System Segment Replacement (CSSR); more critically, the wiring standards for CSSR are not compatible with existing wiring--a problem that will take 2 years to correct.

Such problems are not limited to the defense establishment. Information processing giants such as the Internal Revenue Service (IRS) and the Social Security Administration (SSA) have had particularly disturbing experiences in attempting to modernize their enormous, archaic, and overburdened systems. IRS, for example, has spent over $70 million since 1982 on four major activities to modernize its tax processing system, without producing even a clear plan for the modernized system's architecture. Meanwhile, the agency continues to process tax returns using a system whose design dates back 25 years. Similarly, our reviews of SSA's $517 million dollar modernization program has revealed that the individual components of the overall systems have many problems, including deficient software, insufficient technical integration, unjustified procurements, and inadequate maintenance of existing systems. Further, while the strategic plan is supposed to set the requirements necessary to support the agency's future service-delivery operations, the various component tactical and operational plans are being developed in isolation from any such overall plan.

## WHY DOES THE GOVERNMENT HAVE PROBLEMS IMPLEMENTING COMPUTER APPLICATIONS?

These examples, plus other work not cited, show that agencies across the government have similar problems in implementing automated information systems. For the most part, these problems are not caused by a lack of regulations, policies, or procedures. Rather, we see such problems as having several causes:

--Agency needs are not clearly identified, leading to inadequate definition of requirements.

--Alternative approaches are not considered; too frequently, agencies seek unique solutions to common application needs.

--Problems in software development or system configuration are often deferred to the next development phase rather than being addressed before moving on.

--Determinations of system needs and requirements continuously change, leading to cost overruns and schedule delays.

--Top managers and congressional leaders are not always provided with accurate cost and schedule estimates.

--Managers frequently are reluctant to make the tough decision to terminate a poor development effort, instead choosing to throw additional funding at the problem.

--Program management responsibility changes frequently and is often poorly defined.

--Top agency management is not adequately involved in system development.

## IMPROVING THE PROCESS

We recognize that the underlying causes for these system development problems are varied and complex, and will not be easily or quickly corrected. However, the one absolutely critical factor to moving forward is to increase management attention at all levels. Top agency management must become knowledgeable and involved with the decisions being made to satisfy agency information management needs. These managers must support development programs with technically qualified staff and must be willing to take the time to truly articulate information needs and adequately define the requirements and costs necessary to meet those needs.

Further, agencies need support, encouragement, and oversight. The Paperwork Reduction Act assigns OIRA a significant role in developing policies, in coordinating agency information practices through the review of budget proposals, and in evaluating agency information management practices. While we have not reviewed how well OIRA is carrying out these responsibilities, effective implementation could clearly provide the Congress and agencies a good starting point in helping to address the problem the government is having in developing and modernizing its automated systems. In particular, there are two areas of OIRA's enabling legislation that this Subcommittee may wish to pursue with OIRA officials.

The first deals with the mandate for OIRA to evaluate agency management practices and their compliance with OMB policy, principles, standards, and guidelines. Such evaluations could provide a key to understanding why many of the government's actions to automate systems are having problems and, in formulating solutions to these problems. Specifically, the Subcommittee may wish to pursue with OIRA the extent of these evaluations and its strategy for using evaluations of individual agency systems to identify systemic weaknesses in the government's process for developing automated information systems. In addition, it is important that the Subcommittee not only gain an understanding of the extent and nature of these evaluations, but also of the ability of OIRA to effectively carry out this legislative mandate.

Second, the Subcommittee may wish to pursue how well OIRA is accomplishing its mandate of coordinating--through the review of budget proposals--agency information practices, especially as they relate to the development of automated information systems. While effective implementation of these mandates should help in identifying problems and potential solutions, it is important to note that, in the final analysis, management responsibility and accountability for developing information systems must reside with the agency where the information needs exist and where the systems to meet those needs are being developed.

The Congress can also play an increased role. Hearings such as this serve notice that effective management of information resources is a congressional priority. Agency oversight committees and the appropriations committees need to continue to both challenge and support the actions of individual agencies to more effectively manage information resources and to assure that massive system development activities do not come untracked.

Finally, we need to take better advantage of the rapidly developing information skills and applications outside the federal government. I believe we can learn a lot from private-sector experience in large system development and application and how to better integrate information management into overall management operations.

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That concludes my statement, Mr. Chairman. I will be happy to respond to any questions you or other members of the Subcommittee may have.

GAO

United States
General Accounting Office
Washington, D.C. 20548

Information Management and
Technology Division

June 27, 1989

The Honorable Jeff Bingaman
Chairman, Subcommittee on Government
Information and Regulation
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Enclosed are our responses to your additional questions following your hearing on the reauthorization of the Paperwork Reduction Act. Several of our responses refer to ongoing reviews being conducted for other congressional committees. We would be pleased to discuss this work with you or your staff as it is released. We look forward to continuing to work with you as your reauthorization effort proceeds.

Sincerely yours,

Ralph V. Carlone
Assistant Comptroller General

Enclosure

## QUESTIONS FOR AND RESPONSES OF RALPH CARLONE

## of the

## U.S. GENERAL ACCOUNTING OFFICE

Question 1. Can you give me a basic summary of the other work that may be under way in the GAO, perhaps by divisions other than Information Management and Technology, relative to OIRA and paperwork reauthorization, that you are aware of?

Answer. The Program Evaluation and Methodology Division is working on a request from the House Committee on Science, Space, and Technology reviewing the Office of Information and Regulatory Affairs' (OIRA) process for reviewing and approving agencies' data collection requests from the public. Its effort focuses on (1) how and how well data collection requests are handled in OIRA, (2) the influence of the OIRA review process on agencies' decisions to collect information, and (3) the likely consequences of OMB and agency actions on data availability.

GAO's General Government Division has been asked by the House Government Operations Committee to provide information on selected aspects of OIRA's review of agency regulations.

Question 2. In the information technology area, you have spent a great deal of time reviewing many of the ADP actions of the agencies. I understand that is where the large expenditures are. I wonder if you can spend a few minutes covering some of the other information technologies, such as the on-line access systems, CD-ROM technology, and optical disk technology? I am particularly interested in working with GAO to get more work started in these and other technology areas.

Answer. We have not done any work focused on whether an agency could make more or better use of these technologies. However, we have in several instances reviewed or are reviewing agencies' systems that employ these technologies. For example, we issued a report to the Chairman of the Interior Subcommittee of the House Appropriations Committee on the Forest Service's Geographic Information System (GIS), a computer-based system to store, retrieve, analyze, and present spatially referenced information (such as the exact geographic locations of lakes, roads, or stands of trees). This system involved the use of optical disk technology, though the use of the technology was not the focus of our report.

We also issued a report on the Navy's Naval Aviation Logistics Command Management Information System (NALCOMIS) to the Chairman of the House Committee on Government Operations. NALCOMIS was initiated to automate recordkeeping and reporting requirements, providing an on-line system supporting the aircraft repair, maintenance, and supply activities throughout the Navy and Marine Corps. Our report provided information on areas such as cost growth and reasons for the cost increases and actions taken by the Office of the Secretary of Defense and the Navy to control costs.

In addition, the General Government Division has underway a review of the Government Printing Office's five pilot projects for using on-line and CD-ROM technology to disseminate information to depository libraries.

Question 3. How much work has GAO done in reviewing the cutting edge technology information management systems being created by the agencies, such as the EDGAR system, the FMC system, the Toxic Release Inventory System by EPA, the Trade Data Bank, USDA's EDI program and others? How well are these programs operating? What problems do you see arising?

Answer. We have issued two reports on the Securities and Exchange Commission's (SEC) Electronic Data Gathering, Analysis and Retrieval or EDGAR project. Its purposes are to (1) provide the public with instant access to corporate filings, (2) allow companies to file electronically, and (3) allow SEC staff to process and analyze the companies' filings more efficiently using computers. Two issues we raised had to do with potential filer opposition to the electronic filing procedures and formats that SEC would mandate and the financing of certain system costs through user fees. SEC acted on our concerns by extending the phase-in period for bringing companies on-line and providing for further extensions, if needed, to work out the filing problems and permit time for testing. Also, SEC will fund the costs of the internal processing rather than rely in part on user fees. The contract for the operational system was awarded several months ago.

We have also reported on the Internal Revenue Service's (IRS) efforts in permitting taxpayers to file their returns electronically. We found that, although IRS' electronic filing system processed about 583,000 returns during the 1988 filing season, the system experienced problems when a major software component was unable to operate as intended. IRS also experienced contracting problems that resulted in payment for defective software. In December 1988, IRS' electronic filing project office drafted a proposal for enhancing the current system to achieve the agency's 1990 goal of expanding the availability of electronic filing nationwide. The project office estimated that about $37 million would be required to expand, modify, and maintain this system so that it can handle the projected nationwide volume of about 36 million electronic returns by 1997.

We are concerned about this approach to expand electronic filing because (1) the system was originally developed solely as an interim measure until a nationwide system could be fielded, and (2) IRS has not demonstrated that this approach is the best for achieving the agency's ultimate goals for electronic filing. Before making a major financial commitment to expand the current system, we recommended to IRS that it should clearly define its nationwide needs, analyze alternative approaches for meeting those needs, and resolve its software development problems. Treasury officials agreed with our position and, in January 1989, directed IRS to perform the analysis necessary to identify the best approach.

In addition, we have just started some preliminary work involving the Federal Maritime Commission system, the Environmental Protection Agency's toxic release system, and the Department of Agriculture's electronic data interchange program. It is too early to draw any conclusions about these programs.

Question 4. OMB has published a request for comments in the Federal Register on May 12, 1989, that summarizes a proposal for a center for Information Technology Management Alternatives, which would provide agencies with advice and assistance regarding the technical management of major government information technology initiatives. Can you give me any comments you have on this proposal and can you tell me how much work GAO has completed or plans to do on this subject? Should this center be located in OMB if established?

Answer. We are not doing any work currently on this proposal. However, the concept paper discusses several problems in system development, such as projects lacking a business strategy and development plans being largely designed from the bottom up. We have found examples of the same problems in our work. While we would not locate such a function in OMB because of the function's operational nature, we have no information that would favor any of the three alternatives mentioned in the proposal. Its placement is not as important as is having a good, effective technical management assistance function. Furthermore, it is important to have adequately trained people in the government agencies to process and implement the information and advice they get. As we mentioned in our Information Management and Technology transition report, while technical advisory groups may be used, the government still needs to acquire the trained people needed to manage and build systems throughout government.

Question 5. How do we overcome some of these massive problems in the computer technology applications that you have documented? Where should the leadership for improvement management and better decisionmaking come from?

Answer. While these problems are complex and not easily corrected, the critical step is to increase management attention at all levels to these projects. Top agency management must become knowledgeable and involved in the decisions being made to satisfy agency information needs. They must assure that the appropriate system development management structure that includes an accountable manager with specifically defined responsibilities for the project is in place. They must provide technically-qualified staff to support the development programs. They must assure that the information needs are accurately and completely articulated through the cooperative effort of the systems development managers working with the program managers and that requirements and costs of various alternatives to meet these needs are reasonably defined. The development plans should include built-in, periodic decision points. At these decision points, top agency management should review the development progress and judge whether to proceed to the next phase of the development. Any problems should be resolved before moving to the next development phase.

OIRA should also keep up with the agencies' development efforts to assure that the appropriate development steps are followed as the agencies commit increasing sums of resources to them. OIRA should use these reviews to determine whether systemic weaknesses exist in the government's process for developing automated information systems.

In addition, congressional hearings are needed to serve notice to both OMB and the agencies that effective management of information resources is a congressional priority. Oversight committees and the Appropriations Committees need to continue to both challenge and support agencies' actions to more effectively manage their information resources and to assure that system development efforts do not become untracked.

Question 6. You mentioned the two areas of OIRA's charter that give rise to increased oversight over some of the management problems you described, and you suggest the Subcommittee spend more time pursuing OIRA's effectiveness in the areas of evaluation and coordination. What else should the Subcommittee consider relative to OIRA and reauthorization that would improve these problems? Is it realistic to expect OIRA to solve the problems you are finding?

Answer. Other things the Subcommittee might consider relative to OIRA and reauthorization include whether the number of OIRA personnel is adequate; the nature and extent of the staff's technical expertise, and the extent of coordination between OIRA's activities and budget decisions. We do believe it is realistic to expect OIRA to carry out its evaluation and coordination responsibilities. Effective implementation could clearly provide the Congress and the agencies a good starting point in helping to address the problems the government is having in developing and implementing modern systems. Its evaluations of individual agency systems should result in the identification of systemic weaknesses in the government's process for developing automated information systems as well as potential solutions.

Question 7. Looking at the broad issue of technology development, what role could the government play in fostering the development and utilization of information technology? Could and should government procurement of information technology be used to push the state-of-the-art as Mr. Diebold suggests?

Answer. The government has long had a role in fostering the development and utilization of information technology. The very first electronic computers were developed for and by the government. SSA and Census were among the first large scale users of computers to automate administrative processes. More recently, Defense assumed a lead role in the use of supercomputers. Further, many of the embedded computer systems used in defense applications push state-of-the-art. However, these efforts are most appropriate in a research and development environment and should be recognized up front as such.

Question 8. Mr. Diebold raised a number of points and asked a number of questions about agencies' IRM officials and systems. Do you have any comments? For example, how should we strengthen our IRM officials?

Too frequently, information management is viewed as an appendage to overall agency management; i.e., information management is not well integrated into agency management structure and functions. Ultimately, the success of the IRM official will depend upon top agency officials recognizing the importance of information management. This recognition can be facilitated by having IRM officials report as close to the top of the organization as possible and to make them both responsible and accountable for effective management of an agency's information resources.

Question 9. It seems that there is a great potential for the government to vastly improve its operations through the use of advanced information technology, especially since information, in one way or another is our primary product. Is the federal government doing all it can to utilize this technology? What can we do better?

Answer. The obvious answer is that the government is not doing all it can or should do to effectively use information technology. In my statement, I identified that increased management attention from the agencies, from OIRA, and from the Congress were all needed to help focus attention on effective information management. I also referred to the need to learn from the experience of other groups outside government. GAO will be sponsoring a symposium this fall in which various private sector firms who are known for successful information management will be invited to share their opinions on how government can better utilize technology to improve agency operations. Key agency officials and congressional representatives will also be invited to participate in the symposium.

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FOR RELEASE ON DELIVERY
Expected on Monday
June 12, 1989

# STATEMENT OF KENNETH B. ALLEN
## SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS
## INFORMATION INDUSTRY ASSOCIATION
## BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION
## COMMITTEE ON GOVERNMENTAL AFFAIRS
## U.S. SENATE

Mr. Chairman and Members of the Subcommittee:

I am Kenneth Allen, Senior Vice President for Government Relations of the Information Industry Association ("IIA"). I am pleased to be here today to testify on behalf of the IIA on the Federal government's information dissemination policies and practices, and on the reauthorization of the Paperwork Reduction Act.

The Information Industry Association represents 750 leading companies pursuing business opportunities associated with the creation, distribution, and use of information. The IIA's membership encompasses the entire spectrum of the information industry, including traditional and electronic publishers, data base providers, financial information vendors, interactive electronic services, computer manufacturers, and telecommunications providers.

Although the Information Industry Association is only twenty years old, the private sector information industry is much older. The first information companies -- newspapers and publishers -- have played a vital and valuable role in our nation for the past two hundred years. During the past twenty years, however, we have seen this industry dramatically change and expand thanks to the introduction of new information technologies and communications systems. Newpapers and publishers are no longer confined to inkprint on paper -- they are able to offer a diversity of information products in a variety of media. Of more significance is the fact that the information industry has expanded to encompass hundreds of new companies offering innovative information products and services never before imagined or possible. These products and services are used by all sectors of our society.

For example, through the services of companies such as Dialog, librarians, students and researchers are able to gain immediate access to the knowledge contained in hundreds of data bases. Our legal community depends upon the accuracy and timeliness of the statutory information contained in Mead's NEXIS and West Publishing's WESTLAW. Decisionmakers in both industry and government rely upon economic reports and forecasts created by DRI and Compustat. Inventors have fast and efficient access to information on patents thanks to the products of companies such as DERWENT and Pergamon. The world financial community invests billions of dollars annually as a result of information created and provided by companies such as Dow Jones, Bechtel, and Disclosure. Statisticians and market researchers in industry and government may make more use of Dun & Bradstreet's Dun's Number than they do of the standard industrial classification code. Thanks to the initiative of the Congressional Information Service, our citizens have excellent access to over two hundred years of Congressional hearings, reports, and related information. And finally, many of us in this room track the status of Federal legislation through the services of the Washington Post's Legislate. These are just a few of the thousands of products and services made possible by the private sector information industry.

The economic benefits alone -- an annual growth rate of 20% and a positive balance of trade -- are very significant. Moreover, as an input to other economic sectors, the private sector information industry contributes to enhancing the productivity and economic growth of our entire nation. The most important benefit of the private sector information industry is the role it plays in fostering the free flow of ideas and the right of citizens to create, acquire, and use information without fear of government intervention or control. History is replete with examples of societies where the citizens are dependent upon the government as the primary sources of information and are denied the safeguards offered by a competitive, private sector information industry. Fortunately, our nation has chosen a different path. It is important to remember that the value of the information industry and the emerging information age is not in the media or the provider. The value is in the information -- the content -- and in a diversity of information sources.

These are the companies represented by the IIA -- companies investing substantial private capital in new technologies to create and distribute innovative information products and services that contribute to our nation's economic, political, and social growth. Since the continued growth of this industry depends, to a great extent, upon the role played by the Federal government in the information age, we are vitally interested in the issues before this Subcommittee.

For almost twenty years the IIA has watched -- and assisted -- Federal agencies pursuing the use of new technologies to collect, manage, and disseminate public information. In addition to working closely with the Congress, the Office of Management and Budget, and other policy organizations, the IIA has actively assisted the Securities and Exchange Commission ("SEC"), the Interstate Commerce Commission, the Department of Transportation, and the Federal Maritime Commission ("FMC"), among others, in the development of their respective electronic collection and dissemination projects. We are particularly pleased to have worked with this Subcommittee's chairman on legislation in the 100th Congress establishing the National Trade Data Bank.

Our industry -- more than any other -- knows the value of information and the challenges inherent in developing and offering information products and services based on new technologies. We are pleased to draw upon this expertise and assist the government in meeting the challenges of the information age.

## The Importance Of Government Information Policy

The public's ability to acquire and use government information is an important and complicated issue. It is not new; it has been debated and discussed for more than 200 years. However, the debate has become more complex, important, and exciting with the advent of new information technologies which permit us to fundamentally reshape the ways in which we create, use, and distribute information. This same technology is also changing the way government operates and the role it plays in our society. The Government Services Administration has said the government may be paperless in the year 2000. Our information collection and dissemination policies should reflect and optimize the promise of such technology. We therefore applaud the Subcommittee for its efforts in focusing attention on these policy issues emerging from the creation and distribution of information in electronic media.

Much of the debate so far has been in the dissemination of electronic information by the government. However, it is important to recognize that new information technologies are also changing the ways in which Federal agencies collect information. The Securities and Exchange Commission, the Federal Maritime Commission, the Department of Commerce, the Interstate Commerce Commission, and even the Internal Revenue Service, are operating or developing systems to collect data from the public electronically. This is more efficient for the person providing the information to the government and it is more efficient for the government. No intermediate key stroking or data entry has to take place to create electronic data bases. In developing policy guidelines, this Subcommittee should foster electronic collection as well as dissemination.

Our suggestions regarding Federal information policy are based on three major principles. First: the IIA believes the public interest is best served when effective and efficient citizen access to government information is guaranteed through the coordinated activities of all levels of government, the private sector information industry, non-profit groups, and the library and education community. Second: there should be a clear government-wide statutory, regulatory, or policy framework to guide those responsible for Federal information dissemination activities. Third: this framework should recognize that ensuring public access to specific types or formats of government information may require case-by-case decisions which should be openly arrived at after public notice and comment. There are no hard and fast rules that can be universally employed; what may work for one agency may not work for another. I will address each of these topics.

## An Information Dissemination Partnership

The IIA's position is that the goal of Federal information dissemination policy should be to ensure that citizens have access to the government information they want and need in the most efficient and effective manner. This goal is best achieved through a partnership in which government, the private sector information industry, non-profit groups, and the library and education community complement one another's activities in providing wide and diverse public access to government information. The best method or methods selected for dissemination should be those which best serve the overall public interest within the practical constraints that must dictate all governmental functions. Federal officials may consider direct government dissemination, financed through taxpayer dollars to provide the public with access to government information. However, the inherent scarcity of taxpayer dollars and the inability to assess the value of such information programs guarantees that users dependent upon the government for information will never be fully satisfied. Federal information policy should guarantee that an alternative exists: even if the government is to provide information products or services, it should also be required to provide access to the underlying data base in a timely fashion.

In many cases it may be possible to better meet the needs of information users at less cost to the taxpayer if the government acts as a catalyst to encourage the investment of private sector dollars in the competitive creation and dissemination of new information products and services. By choosing the catalyst role, the government can guarantee the diversity of information sources on which a democracy thrives. It will also stimulate the investment of private capital towards the production of new jobs and the retraining of existing employees to use new technologies, and foster economic growth and maintain a favorable balance of trade.

Where the private sector is already disseminating an agency's information, for example, the agency's daily distribution of electronic copies of its data base often will suffice to get the information widely disseminated. The availability of electronic data at marginal costs will usually result in the availability of more private electronic services. This, in turn, will further stimulate what is often an already very competitive information marketplace. This competition will provide the public with a full range of services in terms of price and quality. If, however, the government provides the same services at little or no cost, this could jeopardize and discourage private sector investment in diverse information services. If the net result is that the government alone disseminates this information, then we are all losers as taxpayers and users of the information.

## Principles For A Policy Framework

The IIA believes that the following goals should form the basis of a government-wide framework for the development of Federal information dissemination policies:

- Citizens have a right of access to public information.

- Government should employ new information technologies for both collection and dissemination to improve the efficiency and effectiveness of government programs.

- Citizens should not be dependent upon government as the primary or sole source of information. Government policy should seek to establish and preserve a diversity of voices and information sources by encouraging a fair and competitive marketplace for information products and services independent of the uncertainties of the appropriations process.

- No single entity, public or private, should be permitted to exercise monopolistic control over information essential to society's well-being.

## A Case-By-Case Approach

The preceding framework is essential to the development of Federal information policies. At the same time, implementation of these policy principles does not mandate the same solution for every agency considering how best to disseminate public information. Ultimately, these decisions will require a case-by-case approach. In each instance, the decision will depend upon a number of unique factors such as the type of information, the users, the government's requirements and responsibilities, the resources needed, and the existence of similar information products. Inasmuch as there is no decision tree to provide a clear answer as to how the public interest will best be served in every instance, these issues must ultimately be treated on a case-by-case approach, subject to the principles established by the overall policy framework.

A good example of this point is provided by the Securities and Exchange Commission's ("SEC") experience in designing its EDGAR ("Electronic Data Gathering and Retrieval") system. EDGAR will permit the SEC to annually collect, process, and disseminate over six million pages of securities filings electronically. All of these documents currently are printed and filed on paper. EDGAR will support internal SEC processing of registrations and other filings. The information collected by the SEC will be available to any member of the public in raw output form from the contractor under a regulated pricing scheme. This equal access approach to dissemination permits the SEC to substantially reduce EDGAR's development and operational costs, and simultaneously provide the public with much better sources of information by encouraging a competitive market for new products and services. Few agencies, if any, will seek to pursue an automation initiative as extensive as EDGAR. However, the policy objectives and principles developed during consideration of this EDGAR proposal are applicable to many other agencies.

Another good illustration is the current initiative by the Department of Commerce to establish the National Trade Data Bank created by last year's Omnibus Trade Bill. Thanks to Senator Bingaman's efforts, the National Trade Data Bank will enhance our nation's ability to export by providing a single source for government information relevant to international trade. No longer will U.S. companies have to wander through the halls of many Federal agencies seeking relevant trade information. Once the Commerce Department collects this information, the data will be available to all members of the public on an equal access basis for the marginal cost of reproduction. All citizens will have better access to the information at less cost. At the same time, this approach encourages the investment of private sector dollars in the development of new, more sophisticated information products and services that will further enhance our ability to export. This approach guarantees that the public benefits from the Data Bank -- both through better access to information and through the economic growth that will come from U.S. success in the international marketplace.

We are pleased that the Congress played a major role in shaping both of the above dissemination activities. By addressing these issues through the legislative process, all interested members of the public had an opportunity to participate in the deliberations and debate. The openness of this process resulted in the current approaches, embodied in statute, which are clearly in the public interest.

One final example of the public/private partnership is worth mentioning. The previous Administration proposed to eliminate the National Technical Information Service ("NTIS") by turning it over to the private sector under a privatization proposal. Although this function could be performed by the private sector -- perhaps quite profitably -- the IIA opposed this proposal because it was not in the public interest. NTIS serves the nation by providing a single source for much of the information produced through the government's investment in research and development. Moreover, the government has a responsibility to ensure the availability of this information -- a responsibility which the government would have abrogated through privatization. In testimony before the Congress, we urged that the NTIS be retained within the Department of Commerce and that steps be taken, such as reducing the cost of NTIS reports, to stimulate complementary private sector investment in new information products and services. Although not all our suggestions were taken, we are pleased to note that the original privatization proposal was defeated.

Through approaches similar to these I have just described, the government is often better able to meet the needs of information users and to save taxpayer monies. These funds are then more readily available for other needed programs, including investment in additional information technology to further improve the operation of government or the dissemination of information -- such as the Environmental Protection Agency's new Toxic Release Inventory Database.

## Reauthorization of the Paperwork Reduction Act

The IIA supports the Paperwork Reduction Act. In an era where technology rapidly outpaces many of our laws, the Act has retained its relevancy.

Of course, there are policy improvements that can and should be made. As a general observation, we believe that OMB should assign more resources to carry out its information policy responsibilities under the Act. The current number of staff at the Office of Information and Regulatory Affairs reviewing information policy matters is simply insufficient in light of the volume, importance, and time sensitivity of these matters.

Furthermore, as we have informed OMB, we believe that an appeal mechanism in each agency is needed to strengthen implementation of the Act. This mechanism could be under the management control of an independent office within the agency such as the Inspector General. Only after agency review could a decision be further appealed to OMB. This would increase agency accountability and responsibility for decisions affecting government information policy.

We also believe it important to underscore a provision of the Act that often goes unnoticed: the Paperwork Reduction Act does not provide any independent authority for the collection of information. We believe that such a requirement should be retained.

The reauthorization of the Paperwork Reduction Act provides the Congress with an opportunity to establish clear goals for Federal information dissemination policy and to codify principles that are essential to the development and operation of efficient and effective Federal information dissemination programs.

We recommend that the legislation reauthorizing the Paperwork Reduction Act incorporate the policy goals I set forth earlier in my statement. In addition, we believe the following principles should be codified.

1. In disseminating information, the agency should ensure equal access to government information, guarantee that no party -- public or private -- has the ability to exercise monopolistic control, and ensure that copies of data bases are available on a timely basis to all.

Monopolistic control of government information, regardless of who exercises such control, is not in the public interest and must be avoided. By definition, monopoly control of information denies the diversity of information sources essential to preserving a free flow of ideas. Moreover, monopoly control of government information will deny citizens the innovative new products and lower prices that can only come from a competitive marketplace. Thus, agencies or their contractors should be required to sell copies in bulk of their underlying data bases in a timely fashion. Even if the government is going to provide products or services, it must be required to provide access to the underlying data base in as timely a fashion as possible. Access to copies of the underlying data base by the private sector information industry, libraries, non-profits, and others makes it possible for the public to have more than one source of products using government information. It promotes diversity of information sources and competition in the retail market for value added services.

Moreover, government information available to the public should be available to all members of the public on an equal basis. Permitting the government or its contractors to discriminate against segments of the public in the provision of public information is inconsistent with democratic principles, anathema to a competitive marketplace, and outlawed by the fifth amendment to the U.S. Constitution. Agencies should be required to disseminate information products in an even-handed manner, without being forced to do so by a court order as recently occurred in Journal of Commerce v. Department of Treasury, Civil No. 88-2132-CRR (D.D.C. 1988). In this case the Customs Service was forced to change its policy of electronically transmitting ship manifest data to U.S. ports weeks before the press or the rest of the shipping industry could gain access to the same data. The government should not be able to barter or trade preferential treatment or otherwise disadvantage some members of the public in their access to government information.

To facilitate a diversity of information sources, Federal policy should also require agencies to disseminate electronic information in a form or media which does not unduly favor a particular technology, software package, or hardware manufacturer. Furthermore, development of software to accompany an agency's data should not delay access to the underlying data base.

2. **Agency decisions to create, change, or eliminate products and services should be made through a process which is fully exposed to public view and in which the public may participate. At a minimum, an agency should provide public notices of its intent. This notice should include an explanation of the benefits and general costs that will result from the agency's action.**

Complete and meaningful public notice will give the public a greater opportunity to monitor and participate in agency decisions affecting information services and products. Experience has shown that, when consulted, the public can make meaningful contributions to the development of efficient and effective public information services and products.

Notice should advise the public of the benefits that the agency intends to achieve by its action. In cases of new products, this "benefits analysis" typically would describe the usefulness of the new or modified product or service, identify the public needs that it is serving, and whether or not it duplicates existing governmental or non-governmental products or services. This will allow for a more meaningful evaluation of the product or service. In addition, the agency should disclose any cost-effectiveness data that it can so that the overall costs of the proposed program can be considered in relation to its benefits. This will permit also an examination of how best to conserve and utilize public funds.

3. User fees for government information products should not exceed the marginal cost of providing copies of the information.

An agency's ability to recover through user fees the cost of developing an information product is limited by the Freedom of Information Act, 5 U.S.C. § 552, and the User Charge Law, 31 U.S.C. § 9701. According to the General Accounting Office, these laws bar an agency furnishing information to the public from charging user fees that exceed the cost of providing a copy of the information. See GAO, ADP Acquisition: SEC Needs To Resolve Key Issues Before Proceeding With Its EDGAR System, pp. 25-27 (GAO/IMTEC-87-2, Oct. 1986). Agencies incur the expense of creating information and operating information systems independently of any public access requirement. Consequently, user fees should not reflect agency overhead or the costs of information creation, but should be limited to the transaction costs associated with the information's reproduction and dissemination.

Furthermore, permitting an agency to generate revenue through higher user fees distorts the incentives for Federal agency managers. The government should not be offering an information product just to meet a market demand. Its purpose in offering a service or product is to serve the public.

Finally, recovering the cost of operating an information system through non-appropriated funds limits congressional oversight. Reduced congressional oversight could thus have the undesirable result of agencies being less accountable to the public about the manner in which they make available government information.

4. The government shall provide access to public information in whatever media it is available.

The form in which information is provided can make a great deal of difference to the way the data can be used. The cost and immediate availability of using electronic copies of a data base cannot compare to the onerous task of creating a data base from thousands of pages of paper documents. Indeed, the format in which the information is available from the government may determine the size of the audience that receives that information, or even if it is disseminated at all. The public should have access to publicly available government information in whatever media it is available. Agencies responding to Freedom of Information Act requests, for example, should not be allowed to curtail the dissemination of public information by denying access to data already available in a specific format merely because they have provided access to the same information in a different format. Cf. Dismukes v. Department of the Interior, 603 F. Supp, 760 (D.D.C. 1984).

Agencies currently are spending valuable resources opposing what are clearly reasonable requests for information in existing electronic formats. A recent illustration of this is National Standards Association, Inc. v. Department of the Air Force, Civil No. 88-0172-TFH (D.D.C. 1988), a case settled last year wherein the Air Force agreed to routinely make available to the Department of Commerce, for public distribution, the magnetic computer tapes from which the Air Force makes microfiches of publicly available information.

5. Federal agencies must not assert copyright, or implement copyright-like provisions, over their information products absent clear statutory authorization.

For nearly a century, Federal law has specifically prohibited government agencies from asserting copyright in its basic information. This critical feature permits any person to reproduce and use government information. This has, in turn, enhanced public access to government information by encouraging the private sector information industry to take such information, add value to it, and create new information products and services. In those instances where a government agency has controlled its information through the assertion of copyright-like policies, such as the National Library of Medicine, the public has been denied the same diversity of information products and has had to rely primarily upon the government for information. We believe that restrictions on the redissemination of government information are inconsistent with the public's interest in a diversity of information products. Copyright law binds government agencies in other ways as well. Thus, Federal policy should clearly state that agencies disseminating information products which incorporate non-government materials protected by copyright are responsible for ensuring that all rights of the copyright holder, including prompt payment of royalties, are protected.

## Conclusion

The public's ability to acquire and use government information is an extremely important and complex issue. The debate on Federal information policy continues to evolve as information technology fuels changes in American society. The debate's evolution requires open-minded approaches by all of the participants. As the debate has evolved, our thoughts on Federal information policy have similarly evolved. We thank this Subcommittee for the opportunity to share our views with it.

# TESTIMONY

OF

JERRY J. BERMAN

DIRECTOR

AMERICAN CIVIL LIBERTIES UNION
INFORMATION TECHNOLOGY PROJECT

AND

BENTON FOUNDATION FELLOW

ON

FEDERAL ELECTRONIC INFORMATION DISSEMINATION
THE NEED TO REFORM THE PAPERWORK REDUCTION ACT

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION

OF THE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

JUNE 12, 1989

Mr. Chairman and Members of the Subcommittee:

I want to thank you for inviting me to testify on the federal government's electronic information dissemination policy and practice and the need for reform. It is a policy issue which I continue to explore as the Director of the American Civil Liberties Union Project on Information Technology and as a Benton Foundation fellow.*

Overview

In my testimony today, I will summarize and augment the views and policy recommendations on electronic information dissemination set forth in a paper I authored on Public Access to Electronic Information which will be published this June.** I ask that the text of this article be included in the hearing record to accompany my oral testimony.

Mr. Chairman, as a Senate leader on issues of technology and law, you are well aware that a revolution is taking place in the way the federal government collects, stores, and disseminates information. Over the last two decades information has been converted from published documents and data into electronic databases, and government agencies regularly use communications and computer technology to perform agency missions from determining the taxes we owe to calculating senior citizens'

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* The Benton Foundation is a charitable, educational foundation focusing on the democratic potential of communications and computer technology. The views I express today do not represent the views of the Benton Foundation.

**By the Markle Foundation and Duke University Press social security benefits. Now, increasingly, the government is disseminating public information electronically through government and commercial database services to serve public policy goals.***

As you know from your precedent-setting work on the National Trade Data Bank in the last Congress, computer technology can be used to develop information systems which enhance the "public's right to know" and serve as a catalyst for improving our economic and trade position in the world.

New information technology can also enhance the ability of government and citizens to marshall critical information to serve the general welfare. In 1986, for example, the Congress passed the Superfund Reauthorization which included the first electronic "right to know" statute. Under Title III, the Environmental Protection Agency is required to make information about toxic releases in the environment available to the public electronically at reasonable cost or under a fee waiver or reduced fee policy when it serves the public interest. EPA is working to make that database available in the near future.

However, there are few examples of the federal government using information technology imaginatively to serve the public's right to know. The fundamental problem is that despite this technological transformation of public information into

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*** Federal government expenditures for electronic data systems have risen from $9.2 billion in 1982 to over $15 billion annually today.

electronic formats, federal law and policy do not specify clear public access rights to electronic government data or obligate federal agencies to disseminate useful public information to citizens electronically at reasonable cost.

Enacted prior to extensive government computerization and before the "PC Revolution", federal information laws -- the Printing Act, the Freedom of Information Act, and the Paperwork Reduction Act -- establish a public right of access to printed government information, including printouts from computerized government databases, but uncertain public access and dissemination rights to electronic public information. In my view, these laws need to be reexamined, revised, and clarified to remove any ambiguity about the public's rights of access to electronic as well as published public information and to make public access and dissemination of electronic public information a central goal of federal information resource management.****

Mr. Chairman, there is an emerging consensus that our information laws need to be clarified and updated to serve the public's right to know in the age of electronic information. In

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****In my testimony and my essay, I define public information as federal government information which is either disseminated by federal agencies or which must be disclosed on request under the laws of the United States. Thus, it does not include government created or collected information which is exempt from disclosure under the Freedom of Information Act and other statutes, such as classified national security information or personally identifiable information which would violate individual privacy.

the last year, the Office of Technology Assessment,[1] the Administrative Conference of the United States,[2] as well as library associations, public interest groups,[3] and the Information Industry Association, [4] have all called for information policy reforms to establishing clear public access rights to electronic data and an affirmative obligation on the part of government to disseminate public information to expand the free flow of information. The Office of Management and Budget's Office of Information and Regulatory Affairs, which establishes government-wide information policy, has itself announced its intention to conduct a policy reexamination.[5]

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[1] Office of Technology Assessment, Informing the Nation:Federal Information Dissemination in an Electronic Age (October 1988)

[2] Administrative Conference of the United States, Recommendation 88-10: Federal Agency Use of Computers in Acquiring and Releasing Information (Adopted December 8-9, 1988) 1 CFR Sec. 305.88-10. See Perrit, Henry H.Jr., Electronic Acquisition and Release of Federal Agency Information (Administrative Conference October 1988)

[3] Letter to J. Timothy Sprehe, Office of Information and Regulatory Affairs OMB from more than 40 organizations and individuals calling for the withdrawal of OMB's Advance Notice of Further Policy Development of Information published in the Federal Register on January 4, 1989 (Vol. 54 Fed. Reg. 214) and for OMB to initiate a comprehensive review and revision of Circular A-130 which governs federal information resource management today. Available from OMB Watch, 20010. St. Northwest, Washington, D.C. 20036.

[4]. Testimony of Ken Allen on Federal Electronic Dissemination Policies on behalf of the Information Industry Association before the Subcommittee on Government Information Justice and Agriculture on April 18, 1989.

[5] Markoff, John, "Policy Shift On Access to U.S. Data," New York Times, D-1 (April 10, 1989).

The inquiry you are conducting is timely. This year, the Paperwork Reduction Act, which governs overall federal government information resource management policy is due for reauthorization. It is time to update that law and establish an overall affirmative obligation on the part of federal agencies government to disseminate published as well as electronic information on a non-discriminatory basis, in useful or usable formats, and at reasonable cost through a diversity of information sources.[6].

## Government Dissemination Policy and Practice

The federal government traditionally disseminates public information to educate and inform the public and conduct the public business. In some cases, statutes such as the Freedom of Information Act require the government to disclose certain information either when it is produced or on demand.

Today, the federal government increasingly disseminates information in electronic as well as published form. In fact, there are over 400 federal government databases of public information -- from the Department of Education's ERIC System to the National Library of Medicine's MEDLARS system. Many government databases are available directly from the government "on-line" or on diskette or CD Rom. Many of these databases are also made available to the public by commercial information providers who "add value" to enhance the usefulness or accessibility of the data and sell it to the public at commercial, market rates.

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[6]. Rep. Bob Wise, Chair of the House Subcommittee on Government Information Justice and Agriculture has introduced legislation to accomplish this policy goal. See H.R. 2381, "the Information Policy Act of 1989." See Memorandum from the American Civil Liberties Union to the House Committee on Government Operations Staff, June 1, 1989.

These developments enhance the ability of those who access this information to learn about the government and its governing and regulatory functions and activities. Through electronic databases or services, users gain access to the most time-sensitive data; rapidly search through document or statistical databases; seek out and quickly find relevant information; and work with subsets of electronic public data to do complicated statistical and data analysis.

As we observe this emerging world of electronic government database systems, it is apparent that the benefits of electronic information systems are not being equitably or widely shared by the public at large. The major users are government agencies, business organizations, and the scientific community. Significantly, most of the major federal electronic dissemination projects -- with the exception of the EPA TRI -- are occurring at agencies which regulate businesses or who disseminate information vital to business decision-making -- the Trademark Office, the Federal Maritime Commission, the Federal Communications Commission, and the SEC.

As the government begins to tout the emergence of "wholly paperless agencies," the first such agency will be the Securities and Exchange Commission's EDGAR system (Electronic Data Gathering and Retrieval System) which will handle 6 million pages of filings annually at a cost of over $50 million dollars per year. Significantly, there are no electronic dissemination projects of this scale underway at agencies such as Justice, Health and Human Services, or HUD, even though the public would benefit from being able to access, manipulate, and use vital electronic government data from such agencies.

The uneven development of federal electronic dissemination systems is a direct consequence of current federal information policy. That policy is established pursuant to the Paperwork Reduction Act of 1980 -- legislation enacted prior to the "PC Revolution" and which encompasses different goals than expanding public access to government information in general or electronic information in particular.

The Paperwork Reduction Act mandates that OMB develop "uniform and consistent information management policies" and creates an Office of Information and Regulatory Affairs (OIRA) within OMB to develop such a policy. However, the clear and overriding objective of information management under the Act is to reduce the government costs and burdens of federal "paperwork."

While the Paperwork Reduction Act encourages government automation and computerization, the Act explicitly states that automation is a means for making government information functions less costly and more efficient rather than a means for maximizing public access to information.[7] Although Congress amended the Act in 1986 to include "dissemination" of information as a function of automation, the purpose was principally to achieve efficiency and cost savings.

In 1985, OMB's Office of Information and Regulatory Affairs issued Circular A-130 to establish information management policy pursuant to the Act. While the Circular recognizes the value of public information and states that the "right to access government information must be protected...", its underlying assumption is that citizens access rights are satisfied if they have access to published information.[8] Electronic public information and its dissemination are treated as a secondary form of discretionary government information which may only be employed by agencies if it achieves cost savings and efficiency. Thus, it is not cost effective if a similar product is available from private sector firms and it is quite appropriate, "where the information is already substantially available in printed form," to consider "dissemination in electronic form to be a service of special benefit the costs of which should be recovered through user charges."

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[7] The legislative history of the Paperwork Reduction Act states that government information resource management should maximize public access to information but access goals are nowhere set forth in the statute or considered in the context of federal electronic information dissemination.

[8]. This is also based on a narrow and actively contested interpretation of the Freedom of Information Act. In 1974, the Freedom of Information Act was significantly revised, but again before the "PC revolution." The legislative history establishes that the FOIA encompasses records stored in computer files. However, it did not explicitly state that citizens had a statutory right to the electronic as well as the published version of the requested information or that the government would be required to program or reprogram all databases to ensure public access to both the electronic and published versions of specific government information. As a consequence, specific government agencies have tried to use the uncertain status of electronic data under the FOIA to contend that citizens must pay additional costs for accessing electronic information which would otherwise be subject to fee waivers (because of reprogramming) or argue that they are under no legal obligation to provide the electronic version of public information. Even if this interpretation is wrong, the FOIA imposes no obligation on the part of federal agencies to disseminate public information electronically. See appendix to this testimony, Berman, Jerry, Communications Policy and the Public's Right to Know: Public Access to Electronic Public Information, pgs. 19-32. See also Testimony of National Security Archive before the House

This, in effect, amounts to a public policy which encourages the development of electronic dissemination systems by the government or private sector but structured in a way which may be detrimental to public access to electronic data. But since the policy assumes that public access rights are satisfied if citizens can obtain the published version of the information, such discontinuities are of little import. Under this policy, the federal government

> --is discouraged from duplicating a private sector information service of important government data even if it is priced beyond the means of public users to afford;

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Subcommittee on Government Information Justice and Agriculture, May 23, 1989. While beyond the scope of this testimony, it is important to note that this interpretation of FOIA is also having an adverse impact on the public's right to know in the electronic age.

--has no writ to develop subsidy programs to reduce or waive fees to make government or commercially available government electronic databases accessible to citizens who cannot afford market rates to use them when it serves the public interest;

--permits the development of electronic government dissemination systems only when commercially viable, which results in databases skewed towards business and regulatory affairs where private vendors can profit from selling government data;

--does not fund the development of critical health, education, welfare, and environmental databases where market considerations deter private vendor development of electronic databases; and

--does not even provide a complete index of government databases or information to direct citizens to their use.

As implemented by OMB Circular A-130, government electronic information policy does set forth some worthy goals. Government must look to the private sector to avoid unnecessary duplication of effort, unfair competition or the specter of either government or private monopoly of information. Certainly, we should not waste resources or allow the government to monopolize information. But federal information policy is incomplete and inadequate without making broad public access to electronic information a principal goal.

Consider the EDGAR system which is designed to achieve some important information policy goals. Under EDGAR, the basic database will be developed by a private contractor who, like a wholesaler, will make it available to any commercial vendor. The contractor and any commercial or non-profit information firm can take the basic data, "add value" and sell it in the market. This "level playing field" seeks to insure competition and avoid government or private monopoly over important government data.

However, the EDGAR design does not insure broad public access. That depends on whether there is enough competition to drive the cost of the EDGAR database down to where citizens can afford it. What if this does not occur? Under the authorizing Act, the SEC will provide three "public" rooms -- in New York, Washington, and Chicago -- where citizens can go and access the basic electronic filings. This is all right for citizens in these cities and those who are sophisticated enough to use the "basic" verses "enhanced" EDGAR system, since the SEC will not provide a "user friendly" version such as will be available commercially.

This level of public access may be sufficient for EDGAR itself.[9] But EDGAR is inadequate as a model for developing many governmental dissemination systems. First, many important health, safety, welfare, and education databases, which could enhance the public's right to know, may not be developed because there is no commercial market for the data. Second, even if they are, reliance on the market may result in making the database systems priced beyond the means of most citizens.

Current electronic dissemination policy set forth in

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[9]. Most citizens are not interested in security filings. Of course, public interest groups and reporters might question whether the system is adequate to serve important public interest needs for securities information.

Circular A-130 may have been viable in the past. But now that the PC revolution has brought computing power within the reach of most citizens, continuing this policy will exacerbate inequities and contribute to the growing division between those who can afford to "dial up" and "down load" and use the enhanced versions of public electronic information and citizens who cannot afford it. The Office of Information and Regulatory Affairs, in its proposed revision of A-130 in January, states cogently why current policy is outmoded:

> While electronic products are more frequently the secondary mode of information dissemination, agencies must recognize that this condition is changing. Integration of information technology into the workplace is rapidly reaching the point that both internal agency processing and analysis of information as well as the public's use of information often occur primarily in electronic form. Supplying the information on paper is sometimes practically useless, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use. Moreover, the printed product is often a summary or aggregation of the larger body of information which, although useful in its own right, does not satisfy all legitimate user needs as well as the entire body of information in electronic medium. Under these conditions, an agency might reasonably conclude that dissemination in electronic medium is necessary for the proper performance of agency functions. (Emp. Supp.)

I submit that Congress must rewrite the Paperwork Reduction Act to make basic public access to electronic public information the central goal of federal electronic information. This does not mean that the government must replace the private sector in developing information systems. A diversity of information sources is essential to the free flow of information and broad public access to information. Nor can broad public access be achieved or guaranteed without government partnerships with the for profit and non-profit private sector to deliver public information in a timely manner and effective manner. These principles are essential elements of an affirmative government policy based on expanding public access to information.

Such a policy not only can maintain public access to government information but give citizens new ability to know about the public business and hold government accountable. For example, in 1986 Congress passed the Superfund Reauthorization which included the first computer "right-to-know" statute. Under Title III, EPA is required to make information about toxic releases in the environment available to the public electronically at reasonable cost or under a fee waiver or reduced fee policy when it serves the public interest.

As EPA itself points out, this new access statute has the potential for enhancing public access to environmental information. Once operational this spring, citizens will be able to sit down at their computer or at their local library, dial up, and download toxic data in particular locales or for specific firms and determine toxic levels in an area, compare it with other locales, and produce customized reports. Without relying on EPA, citizens could produce such a report, call a press conference to announce a campaign, or file a lawsuit based on computer analysis. This is citizen empowerment in the electronic age and EPA is now working to implement this TRI database. Moreover, EPA wants to make it "user friendly" -- and establish a "value-added" electronic system which the average citizen can use.

This is a new electronic precedent for the public's right to know. It advances the "level playing field" of EDGAR to encompass the goal of public access without sacrificing other important policy objectives. For example, EPA did not eliminate the private sector when it sought bids on an enhanced system. However, the private sector was not enthusiastic, largely because of uncertainty about the commercial viability of the database. As a consequence, the National Library of Medicine was chosen to develop the system. However, the private sector can purchase the basic data and also add value to it. This is a model for both a level playing field and public access rights when the public information is important but not clearly viable as a for-profit database.

## Conclusion

Mr Chairman, I believe it is critical to examine federal information policy, regulations, and practices in the era of electronic public information and to move in the direction of amending those laws to establish clear public access rights to electronic government data.

Along with others, I am urging this Committee to establish an affirmative electronic dissemination federal information management policy when you take up the reauthorization of the Paperwork Reduction Act. Over the last eight years, the Paperwork Reduction Act and OMB Circular A--130 have resulted in severe cutbacks in the collection, publication, and dissemination of government information. This is no longer acceptable, particularly in the new age of electronic public information.

Mr. Chairman, the goal of reforming the Paperwork Reduction Act is not to set standards for specific information systems, but to establish affirmative information goals and principles for overall federal information management. Such affirmative information policy principles would include requiring federal agencies to

--broadly disseminate useful public information in electronic as well as published formats;

--make government information available in electronic formats in useful and usable formats as defined by the constituencies they are designed to serve;

--insure that public information is available to the public at reasonable, marginal cost or subject to fee waivers;

--recognize that a diversity of sources and fair competition between government, for profit, and non-profit providers of information is essential to the free flow of information;

In addition, federal information policy should require federal information management policy to augment other avenues of access, such as public access through the Freedom of Information Act or through the Government Printing Office and the Depository Library Program. Federal agency information management policy and practices must be compatible and consistent with other public access mechanisms.

Mr. Chairman, I believe we are now beginning a serious dialogue on the shape of the "public's right to know" for the 21st century. Many issues need to be debated and resolved. If we are to secure these rights and the benefits that flow from our modern computer society, it will take a concerted effort by the Congress, enlightened public officials, public interest groups, librarians, and the information and communications industries to develop new policy initiatives and a consensus for workable reforms.

ASSOCIATION OF RESEARCH LIBRARIES

# STATEMENT ON BEHALF OF THE ASSOCIATION OF RESEARCH LIBRARIES

by

**D. KAYE GAPEN**

DEAN OF LIBRARIES
UNIVERSITY OF WISCONSIN - MADISON

before the

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION

UNITED STATES SENATE

on

PAPERWORK REDUCTION ACT REAUTHORIZATION

June 12, 1989

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Mr. Chairman. My name is D. Kaye Gapen. I am Dean of Libraries at the University of Wisconsin - Madison and I am pleased to testify today on behalf of the 119 research libraries that are members of the Association of Research Libraries (ARL).

ARL is an organization of research institutions, mostly universities. Each institution is represented in our deliberations by the chief library officer - the dean, university vice-president, or director of the main library on each campus or within each institution. I note this because it is important for Congress to recognize that the positions reached by ARL represent the conclusions of many individuals who are responsible for planning and managing information services that support the major research institutions of the U.S. and Canada.

To meet the information needs of the communities we serve, research libraries acquire information from a wide variety of sources including commercial publishers and government agencies. Government information is a resource in demand by our collective faculties, students, and the business and general public who use research library services. The terms and conditions that the U.S. Government sets for access to government information make a tremendous difference in a library's ability to meet these diverse demands.

Government information provided by libraries furthers research in a broad range of disciplines and arenas and contributes to new scientific and technical breakthroughs. Research libraries are a significant source of information and services for individuals seeking to create new knowledge, conduct R&D, and move the research results into the marketplace. Research libraries are of course not the only source of information for the communities they serve, but they do play a pivotal role in support of national goals. Therefore research libraries represent a key component of the national infrastructure that supports and fulfills federal information policy.

ARL appreciates the attention you are giving to the issue of federal information policies and practices. My statement highlights the following major points and concludes with six major principles that ARL urges the Subcommittee support in reauthorization of the Paperwork Reduction Act.

It is ARL's conclusion that

- OMB policies have had a major negative impact on federal information policies to the detriment of public access to public information.
- The current framework for public dissemination of government information has been strained by changes perpetuated by rapidly changing information technologies, and confusion over agency roles, especially OMB, GPO, and NTIS.
- There is a need to amend the Paperwork Reduction Act to clarify OMB's role, especially with regard to other federal agencies information dissemination responsibilities. OMB's over-emphasis on the role of the private sector must be corrected during reauthorization.
- Information technologies have not been fully exploited by the government and have in fact subverted legislative intent.
- In addressing possible solutions, there is a need for collaboration among Committees of Congress and among government agencies and branches of government.

- Of critical importance is the future of the Depository Library Program.

- Research libraries play a pivotal role in support of federal information dissemination programs.

OMB Policies

ARL views the Office of Management and Budget's information policies as a major negative force on the availability of government information to the public. The policies have contributed to a government-wide crisis generated by pressure from OMB and exacerbated by a relatively small but vocal segment of the information industry. The library community is all too familiar with the consequences of these pressures on the information policies and practices of federal agencies. The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information.

The result of these misguided OMB information policies is confusion — in some cases gridlock — that delays agencies' pursuit of the opportunities afforded by using information technologies. Opportunities such as: improved productivity, potential for significant cost savings (estimated conservatively at hundreds of millions of dollars a year), and enhanced public availability of government information.

The Paperwork Reduction Act is cited as authorizing legislation for OMB Circular A-130 and a proposed supplement. The law states that one of its purposes is to increase the availability and accuracy of agency information. The legislative history explicitly states that the law is not intended to limit dissemination of information, but to limit the collection of information judged to be an unnecessary burden on the Nation. There are references in PRA report language to avoiding duplication of information collection - but no reference to avoiding duplication of dissemination. However, OMB has used the PRA to issue policy guidance in Circular A-130 that has in fact limited dissemination activities of the government.

We understand that OMB has undertaken a review of Circular A-130 and the proposed supplement to the Circular. However, OMB has not formally withdrawn A-130 and in the interim, agencies operate under its policy. We urge the Subcommittee to encourage OMB to issue a formal withdrawal of A-130. We also urge the Subcommittee to mandate by statute that OMB information circulars must reinforce Congressional information policy (as reflected for example, in the Depository Library Law, the Printing Laws, the Freedom of Information Act) that support wide public availability of government information. In particular, we seek reaffirmation by the Subcommittee of the responsibility of the government to disseminate its information to the public. There is a need in the PRA reauthorization to correct, in statutory language, OMB's limiting interpretation.

OMB Circular A-130 specifies that agencies make maximum feasible reliance on the private sector for information dissemination functions. This mandates a preference to maintain a competitive market in public information products and services. The competitive market is an important source of information but it is not the sole source. Problems associated with relying on the marketplace as the sole source of government information include: high, profit-driven prices that present a barrier for large segments of the public; the imposition of proprietary control/use restrictions on public domain information; the failure of the marketplace to embrace all government information because so much of it is not "marketable" in economic terms; and, the uncertainty of continuity of commercial firms.

ARL asks the Subcommittee to insert legislative language into PRA to bring the role of the private sector into balance. We recommend that the law specify that the test is not whether a for-profit firm could sustain an information product if the government did not have a similar product, but rather whether there is a legitimate governmental role and public need in creating and distributing particular information products.

Government has a responsibility to disseminate its information. While ARL supports private sector partnership with the Federal Government to carry out this responsibility, we have concerns about the terms of such partnerships. To facilitate partnerships that are in the public interest, we recommend defining the private sector broadly, including libraries (public and private), not-for-profit organizations, as well as commercial information industry companies. And we insist that any partnership adopted by a federal agency to supplant its own operation for information dissemination, be accompanied by a contract publicly available that explicitly details how Congressional mandates in support of public availability of information will be fulfilled. It remains the agency responsibility to set the terms of the contract in a manner that meets Congressional mandates.

A more detailed account of our objections to OMB's information policies is attached to this testimony.

Just as OMB's privatization agenda skewed the development of information programs, so has technology. In electronic files, the line between information collection and dissemination is blurred when technology provides a continuous flow.

## Technology Subverting Legislative Intent

We all know that technology offers opportunities to manage and use information more effectively, and potentially at less cost. We also know some technological applications can inhibit access if user needs are not considered in the design of the system.

Many new technologies have been introduced since key pieces of national information policy legislation were passed. The development of new technologies does not change legislative intent. But, in fact, the application of new information technologies by agencies of Government has subverted legislative intent and increased the tension between achieving the goal of public access and containing the costs of dissemination of government information. As always with the formation of sound public policy, policy decisions should be made first, followed by cost considerations and legislative strategies available to policy-makers.

Specific technologies or formats need not and should not be included in any new legislative language, due to the fast-paced nature of technological change. Instead, it is important to maintain the policies of public access and cost-effectiveness and include flexibility to anticipate the development of yet unknown technologies and formats.

## Need for Collaboration Among Congressional Committees and Government Agencies

We appreciate that the issues the committee is addressing are complex and that the jurisdictions of the Committees of Congress and agencies are intertwined. However, from a user's perspective, and as taxpayers, our concerns are access to government information, and access in a timely and cost-effective manner. It is important therefore to keep the policy objectives of public access and cost-effectiveness in mind and sort out competing jurisdictions and agency roles.

As this Subcommittee looks to changes in the Paperwork Reduction Act, we believe it is important to recognize other efforts underway and work with other Committees of Congress to better define agency roles and authorities. This will be particularly important as both the Government Printing Office and Commerce's National Technical Information Service (NTIS) develop and implement electronic services. Increased cooperation among government agencies, and in some cases coordination of programs, is necessary.

## Role of OMB in Information Resources Management (IRM)

A critical question before the Subcommittee is the role of OMB in regard to federal information resources management, including dissemination of public information products and services by federal agencies. The concept of information resources management (IRM) includes all phases of information life cycle — collection, processing, analysis, storage, and dissemination. An OTA report, Informing the Nation, confirms that information dissemination is not an effective part of IRM agency programs and is not well understood by many senior IRM officials.

We urge caution in determining what, and how much, centralized control is exerted over agency IRM decision-making. OMB makes substantive, programmatic decisions in the name of IRM. In addition, the approach of centralized information technology has been tried and has failed — repeatedly — in research institutions across the country.

For example, at the University of Wisconsin, a single office was given authority to review all hardware and software purchases. After 2 years, the office was declared a failure because it could not deal effectively with the different program needs of individual colleges on campus. The office role was changed to review proposed purchases only when the price rises above a certain threshold and this has yet to be exercised. The office does play a useful role of coordinating, informing, and providing the campus with an overview of campus trends and directions.

We conclude it would be unwise for any single agency to be given too much decision-making authority for government-wide information resources management (including dissemination) activities. Coordination yes, but veto power, no. The nature of centralized responsibilty for information management should be weighed against first, the potential for bureaucratic stifling of effective agency application of information technologies and second, the potential for misuse of power that inhibits information flow.

The placement of government-wide authority for information programs in the same agency that develops and scrutinizes agency information collection and overall agency budgets is an invitation for micromanaging agency programs. It also places inappropriate emphasis on the cost of information programs, and permits information programs to be held hostage pending overall budget negotiations.

Most obvious is the wretched track record of OMB vis a vis information dissemination programs. Ample evidence is available to illustrate how the agency has operated to minimize the government role in information dissemination at the expense of public access to government information.

For example last February, OMB instructed the Federal Maritime Commission that they could not provide remote dial up access for the public (of even the most simple type) to a public database at the Federal Maritime Commission. OMB backed off of this position only after FMC leadership persisted, after Congressional hearings before the FMC authorizing and appropriations committees, and after press accounts shed unfavorable publicity on the OMB move.

The Depository Library Program and OMB

OMB policies have undermined the operations of the Depository Library Program (DLP). This has reduced public access to government information.

To help fulfill its responsibility to inform the public on the policies and programs of the Federal Government, Congress established the Depository Library Program. The Nation's almost 1,400 depository libraries participate in a joint venture with the federal government to provide no-fee public access to federal information. With certain specified exceptions, all government publications are required to be made available to depository libraries (44 United States Code 1902).

OMB has actively discouraged incorporation of electronic formats in the DLP. In a September 29, 1988 letter from OMB Director James Miller to Joint Committee on Printing Chairman Rep. Frank Annunzio, OMB declared the DLP law not applicable to government information in electronic formats and exempted agencies from any obligation to provide such products for the program.

As more information is maintained electronically in computerized databases or magnetic tape, the legislative intent of the DLP is eroded if depositories are limited to paper and microfiche products, and a limited range of electronic products. The General Accounting Office estimated that in 1987, there were 7500 existing electronic information products created by government agencies. None of these were distributed to depository libraries. In addition, most of these products were not available from other government-wide public information programs such as the GPO Superintendent of Documents Sales Program, the National Technical Information Service, or the Consumer Information Center. As a result, the general public whose tax dollars supported their creation has limited awareness and access to these electronic information products.

Role of Libraries in Federal Information Programs

There is a need for Congressional understanding of information flow patterns not just within the government, but also through institutions that are in partnership with the government to provide information to the public on its behalf. Libraries build upon the information programs of the government, expanding the number of points of possible contacts for users and maximizing the uses made of the information. The financial investment now made by libraries in support of equitable public access to U.S. Government information is considerable. An estimate is that libraries spend $10 for every $1 spent by the federal government in support of access to government information.

During your deliberations, we ask that you consider the effect of these policies on libraries, specifically, the effect on the users who turn to libraries for government information. Most critical is your attention to the Depository Library Program (DLP). ARL is convinced that this program, with support and direction from Congress, provides a major and cost-effective program for dissemination of government information to users in all arenas — business, science, education, research, local government, and the general public.

Libraries play a pivotal role in providing information services to a wide variety of communities including those that seek to create new ideas, to undertake research and development, and to move the results into the marketplace. Research library services are used by people who the Nation depends upon to fuel local and national economies. As you know, this has a direct bearing on our ability to support efforts for the U.S. to hold a competitive edge internationally.

Federal information policy determines how libraries serve these communities. Therefore I would like to spend a few mintues highlighting the changes taking place in libraries and in the Depository Program.

## Change in Libraries

Libraries are in the midst of a transition in response to the new information reality. "Electronic information" and "electronic communication channels" allow creative shaping and experimentation toward an entirely new context or framework for library services. A new paradigm for library services is developing because these technologies have characteristics which are different from anything libraries have dealt with in the past.

Most library collection resources (paper, microformat, tapes, sound recordings, maps, AV materials, etc.) exist in "handleable" form and are delivered physically. Electronic information, however, is created in digital form, is stored digitally on a variety of computer disc devices, and is delivered digitally over a variety of telecommunications/telephonic networks.

Providing users with access to electronic information is significantly different from providing access to a traditional, print-based library. Diversity, rather than uniformity, and varying information access skills, characterize gateways to electronic information. A computer tape or CD-ROM containing data is useless technology without the software that enable the information to be retrieved. The degree of assistance from a librarian is substantial when the originator of electronic information, eg, a government agency such as the U.S. Geological Survey, does not provide the retrieval software.

Even with the provision of user friendly software in any electronic product, the library provides assistance to users who need to access data from a wide variety of sources available in different formats and with different retrieval protocols.

A distinctive characteristic of the research libraries that are members of ARL is the provision of collections, and accompanying services, that are broadly based and comprehensive in discipline or topic. In this setting, the library role of assisting a user to understand the scope and limitations of any single source and to identify others, takes on extraordinary dimensions. The broadly based collections, and services, of research libraries advance the research process not just by providing narrow, well-defined search services, but also by enhancing discovery through serendipitous exploration of concepts and data.

Most users lack many of the necessary computer skills to use the wide variety of electronic resources available to them. They therefore require an intermediary — a librarian. Librarians find it necessary to add information and therefore value to electronic databases in order to make them more readily usable by a wider audience.

This is the application of library skills and information technology to retrieve, reformat, interpret, and summarize data.

Libraries are well into this evolutionary transition that encompasses both print and electronic formats. Critical to the success of this transition is that actual possession of information resources, be it a book, film, or magnetic tape, becomes less significant than access to information. This has lead to a reexamination of resource sharing among libraries and in turn has fueled the development of new access and delivery systems.

Because of the breadth and depth of their collections, research libraries tend to serve as resource collections for other libraries. Evolving patterns associated with electronic information will have a significant impact on the role of research libraries in the provision of national information services. Catalogs of research libraries serve as regional or national gateways that contain references to information in electronic as well as printed formats whether held locally or elsewhere. And this has lead in turn to an increased emphasis on linkages with state-wide and regional systems through advanced telecommunications networks.

All libraries are changing as a result of the new information environment within which we provide services. However, depending on the characteristics of the library, and the institution it most immediately serves, the pace and dimension of change varies. Therefore federal information policy must recognize, at least in the short term, some disparity among libraries. This disparity should not suggest a renunciation of the role the library community has always assumed for this nation: that is, as active partners with the U.S. Government in making government information widely and equitably available for the people of the nation.

## Electronic Formats in the Depository Library Program

The electronic format of a government information product — CD-ROM, magnetic tape, etc. — will determine the ability of a library to include it in their collection. Some formats require large fixed costs at the library, with significant local computer systems and electronic storage devices. The investments in local systems may allow users to find information at very small added expense per inquiry. Major investments are being made by research institutions to strengthen information delivery capabilities. The federal investment in information resources management can be multiplied exponentially if federal information policies build on state and local IRM investments.

Patterns of access to government information in electronic formats will likely parallel those patterns emerging with other electronic information. Depositories located in smaller libraries are more likely to choose the low-fixed cost and high incremental cost per search strategy for most electronic information. Depositories located in larger libraries are more likely to choose the high-fixed cost and low incremental cost strategy for very commonly used datafiles. These larger libraries may be in a position to serve other depository libraries with cost recovery from some source.

It may be to the advantage of the Depository Library Program if, for some electronic materials, a few libraries serve as intermediaries for all other depositories as well as for other users of information. Moreover, strengthening existing and defining new relationships among depository libraries may be desirable.

The inclusion of government information in electronic formats in the Depository Library Program will have a profound and pervasive influence on libraries and users.

Congress, the Government Printing Office, and the library community should consider the opportunities now available for restructuring the program to: 1) take advantage of electronic information delivery, 2) redefine service responsibilities among all participants, 3) expand the number of remote service points, and, 4) examine the costs to Government agencies, libraries, and users.

What must be preserved is a program that provides equitable, no-fee access to basic public information for all citizens.

## Change in the Depository Library Program

The ARL Task Force on Government Information in Electronic Format examined how the Depository Library Program might change as a result of these trends. The following description is not presented as a final conclusion but as a suggestion to stimulate discussion and further analysis.

Roles for depository library participants may change in some or all of the following ways. First, equipment and staff requirements to support a full-service electronic depository collection are considerable. Therefore, the program may be well served by having a few libraries support multistate or national public information needs. From this there may develop varying levels of responsibility for providing services for electronic products. Some depository libraries may not be able to afford equipment and/or staff necessary to support certain electronic formats. Location, however, becomes less important because electronic information can be relayed from library to library electronically. The economics of such service patterns require further study based on experience in pilot projects.

This may lead to a redefinition of depository library service in which government documents and gateways to government information will be focused, along the following lines:

> BASIC Services: This level of depository library would serve as an information center in which there would exist a small government document collection and a computerized gateway to electronic government information located elsewhere. The service might be focused more on self-help and on-demand levels. There would be a high cost per transaction but a small fixed cost.
>
> INTERMEDIATE Services: This level of depository library would maintain a larger overnment.document collection and some electronic information and gateways. This library might devise products which would work well through the gateways. The service would include more mediation and synthesis than the Basic level.
>
> FULL SERVICES: This level of depository library would contain research level government documents and a full range of electronic information and the most sophisticated gateways to other electronic information. The depository collection would be supplemented by locally available databases. The level of service would include the highest levels of value-added characteristics. Software packages and other approaches to enhance useability of the government information would be available. The cost per transaction would be low and the fixed cost high.

A second change that might take place concerns depository library cost recovery for performance of certain functions. Depending on the nature of the information and the extent of local investment, depository libraries may begin to recover some or all of the costs associated with adding value to electronic government files. These kinds of changes would of course require legislative change.

There remains the commitment to the role that libraries have always played: provider of no-fee access for the general public to government documents. Not all government information is the same and the level of access provided for electronic products varies tremendously. This depends on the system characteristics provided by the government or added by libraries or other intermediaries.

Government information defined as essential for fulfilling the citizenship information needs of the public and for fulfilling government responsibilities must be distributed to depository libraries in a manner that allows libraries to make it available at no-fee.

**ARL Recommendations for Federal Information Policy Principles**

ARL has a strong commitment to equitable public access to government information. Therefore in May 1988, after considerable discussion of the topic, the chief executive officers of the major research libraries of the Nation adopted six principles concerning government information in electronic format. We concluded that each principle is of paramount importance in the shaping of federal information policy. The six principles are:

1. The open exchange of public information should be protected.
2. Federal policy should support the integrity and preservation of government electronic databases.
3. Copyright should not be applied to U.S. Government information.
4. Diversity of sources of access to U.S. Government information is in the public interest and entrepreneurship should be encouraged.
5. Government information should be available at low cost.
6. A system to provide equitable, no-fee access to basic public information is a requirement of a democratic society.

We strongly urge the Subcommittee to support these principles in your reauthorization of the Paperwork Reduction Act as well as your efforts to clarify the information resources management roles of other federal agencies.

A healthy flow of information from the U.S. Government to the people of the nation is essential to meet our national goals. Confusion over the proper course for government action in information programs has prevailed for too long; the needs are too great and the stakes too high not to act.

Thank you. I will be pleased to answer your questions.

Attachments:

1. ARL Comments on OMB Information Policies
2. Technology & U.S. Government Information Policies — abridged
3. ARL Fact Sheet

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D. Kaye Gapen

Witness appearing before the Senate Subcommittee on

Government Information and Regulation

June 12, 1989

on behalf of the

Association of Research Libraries

D. Kaye Gapen is Dean of Libraries for the University of Wisconsin- Madison. She is a member of the American Library Association, and serves on the Association of Research Libraries Board of Directors. She recently chaired an ARL Task Force on Government Information in Electronic Format.

ASSOCIATION OF RESEARCH LIBRARIES

## ARL COMMENTS ON OMB INFORMATION POLICIES

ARL views the Office of Management and Budget's information policies as the major negative force on the availability of government information. The policies have contributed to a government-wide crisis generated by pressure from OMB and exacerbated by a relatively small but vocal segment of the information industry. The library community is all too familiar with the consequences of these pressures on the information policies and practices of federal agencies. The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information.

The result is confusion, in some cases gridlock, that translates into lost opportunities afforded by using information technologies. Opportunities such as: improved productivity, potential for significant cost savings (estimated conservatively at hundreds of millions a dollars a year), and enhanced public availability to government information.

### Main Objections

ROLE OF GOVERNMENT IN THE DELIVERY OF INFORMATION TO THE PUBLIC: Circular A-130 supports a role for the private sector in lieu of a government role. ARL supports a role for the private sector in addition to a government role.

Private sector entrepreneurship that facilitates the dissemination of government information should be supported. Extraordinary products and services exist and fill a need in the marketplace for some parts of our society. Unfortunately, the expense of these fine services is beyond the reach of other parts of our society. Not every citizen wants, or can afford, to pay the fees charged by commercial database suppliers — fees that range between $65-$175 per hour of use. The result is access for those who can afford to pay for it, and a barrier for those who cannot. Information haves and have-nots are the result — an affront in a nation founded on democratic principles of an equitable, educated, and informed citizenry.

We reject a policy that makes public access to government information created or collected at public expense dependent on the private sector because the government is precluded from providing the information. This extends support for private sector entrepreneurship too far.

There are other serious problems that arise from reliance on commercial sector sources for delivery of public information. These include: the potential for imposition of proprietary control over public domain information; the uncertainty of corporate stability or continuity of service; and the inappropriateness of what amounts to a public subsidy to commercial interests.

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OMB POLICY VS AGENCY MISSION: There is significant confusion concerning the actual intent of A-130 via-a-vis the legislated responsibilities of agencies to disseminate their own products.

Agencies have difficulties complying with both the regulatory requirements of A-130 and applicable statutory mandates. An example is the debate over provision of remote public access to a Federal Maritime Commission database. The database contains shipping tariff information that the FMC is required by law to make available to the public. OMB cites A-130 as policy prohibiting remote public access to the database. The library community, and major segments of the shipping industry, support this capability. Private sector information industry firms are divided on this issue.

BASIC VS VALUE-ADDED: The A-130 supplement instructs agencies to "prefer to wholsesale" government information and leave "retail" value-added functions to the private sector.

ARL objects to limiting the role of government to the dissemination of raw data and the mandatory reliance upon private sector services for access to this same data. This OMB policy would result in significant additional costs to users, including the government itself, and libraries. Users will pay the government for raw data, and then pay a private sector enterprise for software that enables access.

The public should not be obliged to buy an expensive and complex software package to access a government electronic product.

AVAILABILITY AND FORMAT OF INFORMATION: A-130 makes a policy distinction about how information is to be made available based on the format of the information (paper or electronic). ARL contends that the format should not dictate policy.

We insist that fundamental principles inherent in a democracy be reflected in government information policies and that they should not be dismissed because the format of the information changes. Prominent among those principles is equal and ready access to government information for all Americans.

THE DEPOSITORY LIBRARY PROGRAM AND A-130: The Depository Library Program (DLP) is significantly affected by OMB information policies.

To help fulfill its responsibility to inform the public on the policies and programs of the Federal Government, Congress established the Depository Library Program. The Nation's almost 1,400 depositories participate in a joint venture with the federal government to provide no-fee public access to federal information. With certain specified exceptions, all government publications are required to be made available to depository libraries (44 United States Code 1902).

OMB has actively discouraged incorporation of electronic formats in the DLP. In a September 29, 1988 letter from OMB Director James Miller to Joint Committee on Printing Chairman Rep. Frank Annunzio, OMB declared the DLP law not applicable to government information in electronic formats and placed the burden on agencies to make a case for including such products in the program.

As more information is maintained electronically in computerized databases or magnetic tape, the legislative intent of the DLP will be eroded if depositories are limited to paper and microfiche products, and a limited range of electronic products. The General Accounting Office estimated that in 1987, there were 7500 existing electronic information products created by government agencies. None of these were distributed to depository libraries. In addition, most of these products were not available from other government-wide public information programs such as the GPO Superintendent of Documents Sales Program, the National Technical Information Service, or the Consumer Information Center. As a result, the general public whose tax dollars supported their creation, has limited awareness and access to these electronic information products.

COST RECOVERY: A-130 has been interpreted as requiring agencies to recover costs from information users. ARL argues that it is the nature of the information itself, and circumstances specific to the agency and the information product, that should dictate if, and the extent to which user fees should be assessed.

## Conclusion

Opposition to OMB information policies is not new. In 1985, over 300 letters, including letters from Members of Congress, were filed with OMB commenting on the then draft Circular A-130. The majority of the letters were strongly critical of the Circular's provisions regarding access and dissemination of government information and of the privatization policy embedded in the policy. Critics argued that OMB's approach would allow — and in fact encourage — practices detrimental to the public availability of government information.

There is no statutory authority for OMB's A-130 privatization policy. A review of the Paperwork Reduction Act, cited as the authority for OMB's activity in this area, does not reveal Congressional support for privatization of government information. Nevertheless, OMB was successful in extending an overarching privatization initiative into federal information management policies.

Instead of providing federal agencies with useful guidance, OMB information policies are a major obstacle for agencies that seek to use technology for effective information management. In addition, it is well documented that these policies have had an adverse impact on the availability of government information to citizens. The proposed supplement places additional constraints on government agencies in their efforts to fulfill their statutory obligations. Public availability of government information is further eroded and additional financial burdens are imposed on those seeking to gain access to this information.

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# Technology & U.S. Government Information Policies: Catalysts for New Partnerships

Association of Research Libraries*

Technology, moving faster than policy development, has left U.S. government information programs resting on uncertain foundations. This article, an abridgement of a report by the ARL Task Force on Government Information in Electronic Format, is the result of an effort to develop a framework for understanding—philosophically, functionally, and fiscally— the patterns that exist for government information today, and the shifts in those patterns resulting from the introduction of government information in electronic formats. Four questions are identified that should be considered by government agencies and libraries as decisions are made about how to provide the public with government informtion in electronic format. The report points to be need for a clearer picture of how government responsiblities for public availability of government information in elctronic formats might be fulfilled in partnership with the private sector without the loss of the characteristics that make this information distinctive: the absence of restrictions on use, including for basic government information, absence of a fee.

Federal policies affecting public availability of government information arise from a wide variety of laws and regulations, some of which do not offer clear guidance when addressing issues associated with electronic information. Pervasive and profound economic, political, and technological trends have exacerbated longstanding tensions inherent in these policies.

Historically, there has been Federal support for education and libraries in general. The government of the United States is founded on the premise that there will be an informed

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Government Information Quarterly, Volume 5, Number 3, pages 267–278. ISSN: 0740–624X.

electorate, with educated, responsible citizens participating in their governance. This obligation to provide the public with information that ensures government accountability and contributes to an informed citizenry is the foundation of laws within the chapters of Title 44 of the *United States Code* that provides for the Government Printing Office (GPO) sales program and the depository library program.

On a number of fronts, in a seemingly endless variety of ways, these basic premises and partnerships are now challenged. Three major trends are:

- *Privatization of government functions* The move towards privatization of public functions, an international trend, is part of an effort to shrink the size of government by assigning government function to the private sector. Privatization of information programs that had previously been an integral part of government agency programs can have undesirable consequences such as: increased prices for services that lead to classes of information-rich and information-poor; elimination of limited-use reports or service aspects of a program not supportable when subjected to commercial, market-driven product design; the possibility of private, self-interested influence over the delivery of public information; and exertion of copyright or copyright-like control over public information.
- *Reduction of government agency budgets.* Another strategy for shrinking government has been to reduce agency budgets. This has had a profound impact on information programs and services of agencies as well as on the availability of government information in libraries. It has also led to unusual arrangements between Federal agencies and commercial information companies to develop jointly agency electronic information systems—arrangements that sometimes lead to undesirable agreements that give exclusive control of public information to private organizations.
- *Over-zealous protection of government information.* A penchant for secrecy has led to overclassification of government information, efforts by the defense and intelligence community to impose controls on unclassified information, and pollution of information sources with an active disinformation campaign intended to mislead all except those with a "need to know."

In 1985, ARL adopted a "Statement on Access to Information" affirming the Association's commitment to the principle that unrestricted access to and dissemination of ideas are fundamental to a democratic society. Recognizing that legitimate goals of national security and economic competition exist side-by-side with the principle of unrestricted access, ARL concluded that the latter must take precedence unless a clear and public case can be made for restricting access in a specific instance or to a clearly defined body of information.

Increased application of new technological developments (large computer databases with interactive online capabilities, diskettes of data for use in personal computers, laser optical disks, and so forth) for the storage and retrieval of U.S. government information has challenged traditional practices of providing the public with access to this information. To address these challenges, ARL is developing a statement of principles that specifically address the public availability of U.S government information in electronic format (see Table 1). Identification of essential elements or measures against which government information programs might be evaluated in terms of equitable citizen access to U.S. government information would contribute to efforts at striking the proper balance between competing principles in an environment of fiscal constraint.

*Table 1.* Government Information in Electronic Format: A Statement of Principles

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Note: The following principles, with accompaning rationale statements, were submitted to the membership of ARL in October 1987 for review and were adopted in May 1988. Readers are encouraged to contact the ARL Office for the full statement as adopted by ARL members.

The ARL Task Force on Government Information in Electronic Format developed the following six principles and encourages full discussion of them in terms of the opportunities, challenges, and financing questions posed by electronic information products.

1. The open exchange of public information should be protected.
2. Federal policy should support the integrity and preservation of government electronic databases.
3. Copyright should not be applied to U.S. government information.
4. Diversity of sources of access to U.S. government information is in the public interest and entrepreneurship should be encouraged.
5. Government information should be available at low cost.
6. A system to provide equitable, no-fee access to basic public information is a requirement of a democratic society.

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Fundamental principles inherent in a democracy must be reflected in government information policies and should not be dismissed because the format of the information changes. Inattention to fundamental principles in support of public availability of government information allows a vacuum to form wherein decisions are based largely on environmental pressures such as political polemics, budgetary constraints, marketplace economics, and/or administrative convenience. Decisions so made can result in practices of benefit to one segment of our society but to the disadvantage of others.

Some basic areas of contention, where policy is unclear or challenged, include the extent to which tax dollars should fully support the collection and active dissemination of government information and when user fees are acceptable to recover some of the costs of these activities, and how to determine the proper balance between encouraging commercial entrepreneurs to enter the market with government information products while maintaining government responsibilities to provide information services.

## PRIVATE SECTOR ROLES AND GOVERNMENT RESPONSIBILITIES FOR DISTRIBUTING INFORMATION

Government information, in a variety of formats, is made available to the public by a diverse assortment of providers including the government itself (e.g., GPO, NTIS, and/or direct from source agencies including Congress), commercial and non-profit information companies, and libraries. This variety of sources of access to the same information is in the public interest because it ensures that users, both within and outside of government, have available a sufficiently varied array of sources to support judgments on data credibility and assessment of government accountability. However, questions have been raised about government duplication of commercially available information products.

The private sector, both for-profit and non-profit, plays an active and important role in distributing government information in print as well as in electronic form. Entrepreneurs can invent new information products that meet particular market demands. New products can improve the well-being of consumers by identifying and filling consumer demands more effectively or by offering lower costs. As electronic systems grow in importance, private entrepreneurs may be expected to develop new products that take advantage of the new opportunities.

Concerns about private sector development or operation of government information systems include the uncertainty of corporate stability or continuity of service, the imposition of proprietary control over the content or use of public domain information, and the imposition of high, profit-motivated fees for access to information created or collected with public funds.

## Government Responsibilities

What is the appropriate scope for government action in providing information and where should we look for effective private action? For certain classes of information, full and effective government participation in the provision of information products is essential. For other classes, government participation should be limited or the information collection activity eliminated. In particular, where broad citizen access to information is essential to the operation of our democratic institutions, effective government involvement in the production and distribution of information products is important.

Indeed, the level of information to which legislators themselves have ready access depends on an active and subsidized program of government publication. The effectiveness of electoral institutions in managing a complex governmental enterprise, then, depends critically on ready and general availability of documents that describe governmental actions, programs, and policies.

For this class of information, government tax-financed creation and distribution of products are essential. Our democratic institutions will not engender trust if information about their activities is not broadly distributed and routinely and conveniently available. As electronic formats become desirable means for citizen access, then, the government, and in particular, the Congress, should play an active role in supporting appropriate, new electronic information products and delivery systems.

In these cases, government publication and distribution of information products are valuable and appropriate. Of course, if the government failed to publish such products, private firms would find more opportunities to create products. However, our society will be the poorer if it does not have tax subsidies for certain kinds of information products. The test, then, is not whether a for-profit firm could sustain an information product if the government did not have a similar product, but rather whether there is a legitimate governmental role and public need in creating and distributing particular information products. The value of tax supported publication has long been recognized for print products. The same logic militates the tax support of particular electronic publications.

The Federal deficit rightfully highlights the need for reassessment of Federal spending patterns. Government activities associated with the public availability of government information have costs associated with them and should be subject to the same scrutiny applied to other parts of agency budgets. Essential to undertaking an effective, long-term view of agency information programs is identification of the purposes that the information content serves, within and outside government, and a judgment of its relevance to fulfilling government responsibility for making information available.

The government may find its purposes well met for certain information sets that support a particular market, e.g., crop reports, by gathering the information with tax support but allowing consumers to support distribution through fees. How the depository library program might be affected by such distribution is a question that should be addressed in a review of the program.

In some instances, there is no compelling reason for government involvement. When the government has no particular advantage, or need, to gather a given set of information, market forces should lead to an appropriate array of private information products.

### Defining Complementary Partnerships

There are compelling reasons to delineate complementary roles for the government, libraries, commercial and non-profit information organizations in making government information available to the public.

All libraries designated as part of the depository library program (a mix of publicly and privately supported organizations), and many other libraries as well, have and will continue to play key roles in fulfilling government information responsibilities by providing no-fee access for the general public to government documents. New electronic formats for the information do not change library commitment to that role. What is key is that government and libraries collaborate on developing a common understanding of respective responsibilities to the public.

What is needed is a clearer picture of how government responsibilities for public availability of government information in electronic formats might be fulfilled in partnership with the private sector without loss of the characteristics that make this information distinctive: the absence of restrictions on use including, for basic government information, absence of a fee.

The private sector has already contributed to the development of a diverse array of information systems that form critical supports for all aspects of our democratic society. If common goals can be established the private sector with its acknowledged strengths could also contribute in a significant way to fulfilling government responsibilities to make information available to the public. What is key is identification of mutual private sector-government goals that support partnerships for the delivery of public information unencumbered by copyright or other use restrictions. For that information where broad citizen access is essential to the operation of our democratic institutions, such partnerships must function so that the costs do not force the imposition of user fees by the government or libraries.

## FRAMEWORK FOR POLICY ANALYSIS

The characteristics of government information in electronic formats demand a new framework for analyzing and defining how this information should be made available to the public. Two elements of such a framework are presented: a taxonomy to categorize the characteristics of government information in electronic format, and a model that identifies potential value-added processes for an information system. In addition, hypothetical scenarios illustrate the need to consider four key questions as decisions are made about approaches to distributing electronic information.

## Taxonomy of Government Information in Electronic Format

Identification of a taxonomy or classification of government electronic information systems or products would contribute to policy analysis. For example, electronic information products or systems might be categorized on the basis of the following four dimensions.

- *Volatility.* Some electronic systems are highly volatile—dynamic and highly time sensitive; others are static.
- *Public Policy Relevance.* Some systems convey information that is highly relevant to consideration of important public policies and thus are of broad public significance; others have information of little policy relevance and are of interest only to a specialized audience.
- *Value to Research.* Some systems convey information that is highly significant for research; others convey information of limited research value.
- *State of System Development.* Some systems could be compared to wholesale products, requiring significant hardware and value-added software support before end-users may make use of it; others are more like retail products, fully packaged and presented for end-users.

These four dimensions are described in terms of two extreme points on a spectrum. In reality, consideration of the characteristics of a specific system following such a classification will fall anywhere between the two extremes. A taxonomy reflecting these four dimensions is not intended as an absolute measure for policy making but rather is put forward to illustrate that not all government information in electronic format is the same and to identify some obvious categories of systems that will encourage policy discussions to move from generalities to specifics.

Each category of such a taxonomy may suggest different ways to address policy issues associated with dissemination of the information. The taxonomy could be subdivided further into files that are textual as opposed to other kinds of information as well as by the anticipated extent of public audience for the information, should these kinds of characteristics, or others, need to be considered in making policy decisions.

## Scenarios for Dissemination

How government information in electronic format is disseminated will have an impact on existing partnerships between the government and for-profit and non-profit institutions. The partnerships may, in fact almost certainly will, continue in some capacity. However, the responsibilities, especially those concerning which partner incurs what costs, are very much in question.

Policy development for dissemination of government information in electronic format is in great flux. Even so, it is important to anticipate if not all of the possible options, at least some of the general approaches that may be taken. By comparing two very different dissemination scenarios to one another it becomes clear how government information could be provided with varying levels of user accessibility mechanisms. While an awkward phrase, the notion of user accessibility mechanisms is significant to any definition of the government's responsibilities for ensuring public availability of government information in electronic format.

For example, a government agency may produce electronic files with no user accessibility mechanisms, expecting that if those mechanisms are needed, they will be added and paid for by someone else. At the other extreme, a centralized government agency could provide full support for an array of electronic information products that an inexperienced end user can master quickly.

### Key Considerations

Four questions should be considered by government agencies, or libraries acting as intermediaries, as decisions are made about how to provide the public with government information in electronic formats. Responses to these questions, when applied to a particular information system, may suggest how access to that system should be paid for—for example, fully tax supported or partially tax supported with intermediaries and/or users paying part of the costs.

- What is the significance of the information in the system for the development, pursuit, or assessment of public policy positions?
- What are the user accessibility mechanisms or value-added processes needed and/or added by the creator of the information, the mediator of the information, and the user of the information?
- What are the relative costs of adding specific value-added characteristics at any point in the information chain (creation, mediation, and use) in order to assure equitable public availability of government information? And how will the costs of providing these value-added processes be distributed among Federal and state agencies as well as private organizations?
- If a shift in costs (among government, libraries, and users) is anticipated when this government information is disseminated in an alternate format, how will this affect resource sharing among libraries and the ability of the depository library system to support no-fee public access?

### A Value-Added Model

A search for a means to analyze such complex and shifting relationships and responsibilities identified a model in a book by Robert S. Taylor titled *Value-Added Processes in Information Systems.*[1] Taylor views an information system as a totality from originator to end-user. His definitions and conceptualizations, particularly the transformation of a "wholesale" information product through value-added processes into one that is "retail," are highly applicable.

Taylor defines value-added activities as those procedures that strengthen or render more accessible messages in an information system. His definition of an information system includes librarians in their function of mediating information to the public, as well as others such as analysts, evaluators, and synthesizers who perform similar functions. In viewing the transformation of the "wholesale" product, in this case raw government data that are unusable without mediation or intervention, into a "retail" information source, the model illustrates how responsibilities for adding value may shift among originators, mediators, and users. It also suggests the kinds of changes needed in total information systems as electronic information is substituted for print sources.

Taylor's model, based on 23 elements, allows an assessment of the presence and quality of values added at each stage of the information process, that is, by the originating source, the library or other mediating service, and the user. The model stresses end-user needs and the structure of the information environment as major elements in the evolution and evaluation of information systems. The fullest application of the model implies the creation of problem-clarifying systems, significantly different from question-answering systems.

## NEW FRAMEWORK FOR LIBRARY SERVICES

Government information—its creation and dissemination—is a microcosm of the elements and layers of a new paradigm for libraries.[2] The prospect of GPO providing government information in electronic format to depository libraries accelerates the need for libraries to address the shifting paradigm and turn concepts into very real questions of library and public policy.

There is increasing need, because most users lack all the necessary computer skills and require an intermediary, for librarians in archives or libraries housing machine-readable data to add information and therefore value to these resources in order to make them more readily usable by a wider audience. In a sense such librarians are information technologists working with a variety of print and non-print formats, electronic databases, and other sources and adding their skills in retrieving, reformatting, interpreting, and summarizing data.

The evolution of a bimodal library environment that encompasses both print and electronic formats will also lead to a re-examination of resource sharing among libraries. Ownership of information resources becomes less significant than access to information and leads to the development of new access and delivery systems.

Because of the breadth and depth of their collections, research libraries tend to serve as resource collections for other libraries. As more multi-type libraries have used OCLC or RLIN for retrospective and current cataloging, the presence of their holdings in these networks has spread interlibrary loan requests among a larger number of libraries, although the general pattern of research libraries as net lenders seems to be continuing.

Evolving patterns associated with electronic information will have a significant impact on the role of research libraries in the provision of national information services. Catalogs of research libraries could serve as regional or national gateways that contain references to information in electronic as well as printed formats whether held locally or elsewhere. This could lead, in turn, to an increased emphasis on linkages with state-wide and regional systems through advanced telecommunications networks. It is unlikely, however, since the use of electronic sources requires larger capital and personnel investments, that sharing will necessarily lead to a reduction of current expenditures for any individual library.

## THE DEPOSITORY LIBRARY PROGRAM

Strong depository collections, including regional depositories, reside in a wide variety of types of libraries with varying degrees of institutional resources and different institutional missions. As resource sharing becomes more expensive, the ability and willingness of some regionals to serve as resource centers are in question. As the pattern of resource sharing among different kinds of depository libraries changes with the introduction of electronic formats, it is possible that participating libraries will define new scopes for their depository collections and offer a more focused but well defined array of services for the collection.

The particular kind of electronic format chosen to make government information available to depositories will probably largely determine the willingness of depository libraries to add it to their collection.

Some formats would involve incurring large fixed costs at the library, with significant local computer systems and electronic storage devices. Such investments in local systems may allow users to find information at very small added cost per inquiry. For example, a library might acquire data on tape and mount the files on magnetic disk drives attached to mainframe computers with powerful search software available to users. Other electronic formats may involve little local investment but require significant incremental cost per inquiry. For example, a datafile may reside on a remote computer with access charges per unit of search levied to recover the cost of the computer time as well as the telecommunications charges.

Patterns of access to government information in electronic formats are likely to parallel patterns already emerging in regard to other electronic information. That is, depositories located in smaller libraries or institutions are more likely to choose the low fixed cost and high incremental cost per search strategy for most electronic information. Depositories located in larger libraries are more likely to choose the high fixed cost and low incremental cost strategy at least for very commonly used datafiles. These larger libraries may be in a position to serve other depository libraries with cost recovery from some source.

## Examination of Budget Mechanisms

Access to government information through the depository program (and in addition to it) involves costs. The GOVERNMENT bears a significant part of the costs by publishing and distributing material to the depository libraries. The LIBRARY bears a significant part of the cost in the provision of space, professional and clerical staff assistance, the provision of bibliographic access, reference mediation, the continuing maintenance of the collection, and, in an increasing number of instances, the provision of the equipment necessary to read or use the documents. USERS bear a significant part of the cost as well, in particular, the time and travel associated with locating and using the materials (as well as through the tax dollar).

Over the history of the depository program, each component involved has responded to the costs involved by building the budgets required to maintain the chain of creation, distribution, integrated bibliographic access, physical accessibility, and use. However, even before the impact of technology began to be so strongly felt, the pressures of budget constraints had begun to affect the historical patterns. The impact of technology and the creation of a whole new paradigm of library services have accelerated the rate of changes, and significant adjustments are now being made within library budgets.

In regard to electronic government information, then, there are at least two tensions that must continue to be addressed for resolution: (1) the tension between the goal of increased efficiency (for the government agency, the library, and the user) and the maintenance of equitable access to public information; and (2) the tension involved in the cost shifts in the creation, distribution, and accessibility chain as technology has an impact on each component of the chain.

It is clearly important that all of the involved parties ask the correct array of cost questions in order to produce the accurate information on which will be based a host of future decisions about information products and services.

A college or university library must also take note of relationships its parent institution may be in the process of establishing with business, agribusiness, and other parts of the private sector including programs in support of technology transfer. The growth of university-related research parks is one of the best examples of the mutual benefit that can accrue to higher education and the private sector when cooperation occurs. Academic libraries, by institution mandate and within institution-wide policy controls, are more and more closely involved in the support of these mutual endeavors. The fact that the costs and benefits for the private sector and higher education are not mutually exclusive adds yet another layer of complexity to the policy and economic context within which academic libraries provide information and service. Certainly, that layer of complexity is present in the provision of government information in electronic form resulting in another important element to be considered.

The prospect of the delivery of government information in electronic form through the depository program raises important questions about whose budget will be affected as patterns change: the government agency's, the library's, or the user's? Will the costs of the depository program that includes electronic information closely parallel those experienced for print formats? Will the information have relatively the same value as the material in print to the government, to libraries, and to users so that the present array of support for the print program can be extended to support the electronic information?

The answers to such questions depend on the details of the design of a particular file of electronic information and on the policies adopted for implementation. The nature of costs to the government, the library, and the user will differ markedly for different electronic information products. What is needed is an examination of Federal agency and library budget mechanisms that have supported the statutory responsibilities of the source agency, the GPO, and depository libraries.

## Possible Changes in the Depository Library Program

The findings of the ARL Task Force on Government Information in Electronic Format prompted speculation about how the depository library program might change as a result of these trends. The following description is not presented as a final conclusion, but as a suggestion that might stimulate discussion and further analysis within the depository library community and those communities they serve.

Roles for depository library participants may change in some or all of the following ways. First, since requirements for equipment and staff to support a full-service electronic depository collection are considerable, the program may be well served by having just a few libraries support multi-state or national public information needs as part of the program. From this there may develop varying levels of responsibility for providing services for electronic products. Some depository libraries may not be able to afford the equipment and/or staff support to provide services for certain kinds of government information in electronic form. Location, however, becomes less consequential as electronic information can be relayed from library to library electronically, recalling, however, that the economics of resource sharing may be different.

This may lead to a redefinition of depository library service responsibilities in which government documents and gateways to government information will be focused, along the following lines:

- *BASIC Services.* This level of depository library would serve as an information center in which there would exist a small government document collection and a computerized gateway to electronic government information located elsewhere. The service might be focused more on self-help and on-demand levels. There would be a high cost per transaction but a small fixed cost.
- *INTERMEDIATE Services.* This level of depository library would maintain a larger government document collection and some electronic information and gateways to other electronic information located elsewhere. This library might devise products that would work well through the gateways and might invest in developing value-added approaches to the government information. The service would include more mediation and synthesis than the Basic level.
- *FULL Services.* This level of depository library would contain research level government documents and a full range of electronic information and the most sophisticated gateways to other electronic information. The depository collection would be supplemented by related, locally available databases. The level of service would include the highest levels of value-added characteristics. There would be developed software packages and other approaches that would change wholesale government information into retail government information. The cost per transaction would be low and the fixed cost high.

A second kind of change that might take place within the program involves depository library cost recovery for performing certain functions. Depending on the nature of the information itself and the extent of local investment, depository libraries may begin to recover some or all of the costs associated with adding values to electronic government files.

There remains the commitment to the role that libraries have always played: provider of no-fee access for the general public to government documents. What is highlighted by the prominence of electronic information is that not all government information is the same and that the level of user accessibility provided for electronic products varies tremendously depending on the system characteristics provided by the government or added to it by libraries or other intermediaries. Government information defined as essential for fulfilling the citizenship information needs of the public and for fulfilling government responsibilities should be distributed to depository libraries in a manner that allows libraries to make it available at no-fee.

What may result from such a clarification or refocusing is another category of information—that of considerable importance to a narrow segment of society, important enough to justify agency efforts to collect or generate the file, but that is too costly to justify full tax subsidized value-added enhancements. This kind of information might be distributed to depository libraries on terms that allow some cost recovery mechanism from a source outside the library—the user, a government agency, or perhaps a consortium of users. Therefore, this second possible change for the program, that depository libraries may begin to recover all or some of the costs associated with adding value to some electronic government files, is dependent upon the nature of the information itself and the extent of local investment made in order to compensate for costs not incurred by the government.

For example, some form of reimbursement may be made to support public use of a deposited government file that has been significantly enhanced by locally developed software. The point is: if depository library program policies define that the library is to add values to enhance an electronic file, that policy may also define the level of value to be added, who is to be served, and how and who is to pay to support the system.

## CONCLUSION

Technology offers opportunities that may be to the advantage of users and both public and private sectors. However, political decisions about meeting government obligations to provide information should not be contingent on format.

The U.S. government's obligation to be accountable to citizens, and to make available information created or collected with tax dollars, is fulfilled in part through partnership with public and academic libraries. Circumstances warrant a reassessment of library responsibilities with a view to new opportunities made feasible by technology.

## ACKNOWLEDGMENT

This article is an abridgement of *Technology & U.S. Government Information Policies: Catalysts for New Partnerships* (Washington, D.C.: Association of Research Libraries, 1987). (Available as a separate report for $5 [prepaid].) Also included within (ARL) *Minutes of the 110th Meeting, May 7–8, 1987, Pittsburgh, Pennsylvania.*

## REFERENCES

1. See R. S. Taylor, *Value-Added Processes in Information Systems* (Norwood, NJ, Ablex Publishing Corp., 1986).
2. See Association of Research Libraries, *The Changing System of Scholarly Communication* (Washington, DC, ARL, 1986). (Available for $1, prepaid.)

ASSOCIATION OF RESEARCH LIBRARIES

# FACT SHEET

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| **Programs:** | Current areas of activity include: scholarly communication, building library collections and ensuring widespread availability and access to them, preservation of research library materials, staffing for research libraries, library education, information policy and legislative affairs relating to research libraries and scholarship, and library management and statistics.<br>Major projects include: the North American Collections Inventory Project, the Government Information in Electronic Format initiative, the National Register of Microfilm Masters (NRMM) Recon Project, the ARL Statistics Program, the OMS Academic Library Development Program, the OMS Training Program, and the OMS Systems and Procedures Exchange Center. |
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**Office of Management Services:**

The ARL Office of Management Services (OMS) was established in 1970 to help research libraries improve their management and service capabilities. OMS conducts research into the organizational problems of academic libraries, develops new management techniques, and offers information services and training.

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Statement of
Dr. Janet L. Norwood
Commissioner
Bureau of Labor Statistics
before the
Subcommittee on Government
Information and Regulation
Committee on Governmental Affairs
United States Senate
June 12, 1989

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to discuss with you the experience of the Bureau of Labor Statistics (BLS) with the Paperwork Reduction Act. As you know, BLS is responsible for the collection, processing, analysis, and dissemination of labor statistics in such areas as employment and unemployment, inflation, wages and benefits, productivity and economic growth. In carrying out these responsibilities, we ask respondents to provide us with information, and we believe that we provide them with data that is important not only to them but to the country as a whole.

These data are required by our Government to implement programs, monitor the state of the economy, allocate funds, and to index payments. They are used by the citizens of our country to evaluate the effectiveness of Government policies. They are used by the private sector for economic planning, collective bargaining, wage administration, and for escalation of long term contracts. The financial markets all over the world await our monthly releases to make judgments on the future outlook of the economy and the direction of stock and bond prices.

For these reasons, we at BLS must produce data of high quality. An increase of only 1.0 percent in the Consumer Price Index (CPI), for example, has been estimated to affect the Federal Government's fiscal position by nearly $5 billion through increased expenditures on entitlement programs and reduced revenues from income tax receipts. Looked at another way, fully half of the American population lives in a household in which someone receives income that is affected by the CPI. Ninety billion dollars in outstanding defense industry contracts include a labor component that is escalated by the average hourly earnings series produced by BLS. Somewhere between $90 and $300 billion in long-term contracts are escalated by the Producer Price Index. Local area unemployment statistics are important components of models that allocate billions of dollars of Federal funds to States and local areas.

Under these circumstances, we must use the best statistical techniques and sample designs the Government can afford to collect these data so as to ensure the correct allocation of resources and to prevent erroneous decision making both in the public and the private sector. In spite of these enormous data collection responsibilities, however, the Bureau of Labor Statistics has a minuscule portion of the burden hours of the entire Department of Labor. Indeed, because of the large regulatory responsibilities of our Department, BLS represents less than 3 percent of the total burden hours of the Department. I believe this raises some important questions about the effectiveness of a system which combines reductions in the respondent burden of regulation with that of statistical information. This kind of trade-off can be very difficult indeed.

Furthermore, the phenomena we measure are complex, and they constantly change. There is a constant need for reexamination of all that we do so that we can continue to produce meaningful data with the quality needed by our users. While we attempt to keep the burden on our respondents as low as possible, we do, at times, need to expand samples and to obtain additional data to ensure accuracy and relevancy. For example, today nearly 8 out of every 10 nonfarm workers have jobs in the service-producing sector, and many of these workers are employed in relatively small establishments. Because service-sector establishments tend to be smaller than those in the goods-producing sector, we need to go to more of them to maintain consistent levels of statistical reliability. Developments of this kind --

which we face every day -- can sometimes result in increases in respondent burden which have not been recognized in the requirements in the Act for annual burden hour reductions.

The Bureau of Labor Statistics has worked hard to minimize the burden placed on our respondents. First of all, we have our programs continually under review. In the 10 years since I have been Commissioner, for example, we have completely restructured our output and have eliminated entirely all programs that are not an integral part of the basic core of national economic intelligence for which we have responsibility. In this restructuring, which has at times been painful since every BLS series has important users, we have always taken into account the need to minimize cost and respondent burden.

I have given a lot of thought to these kinds of issues. My belief is that a statistical agency cannot stand still; it must move forward or it will fall backward. We must find innovative ways to meet the challenges presented by the shifting views of the society and the changing economy in which we live.

Let me give you some examples of the way in which we have tried to develop creative approaches to improving data while controlling the burden on respondents. One extremely important area of our work is our Federal-State cooperative system. For several decades, we have worked with the individual States to maximize the quality and usefulness of data collected through a cooperative system designed to eliminate a dual burden on respondents. Under this system, State statistical agencies work with BLS to collect data using uniform OMB approved questionnaires. BLS provides technical direction and guidance; the states collect the data. The beauty of this system is that employment and safety and health data required by States, local areas within States, and by the Federal Government can be collected only once rather than separately by each level of government. A similar Federal-State statistical collection process is in place in the Department of Agriculture through the National Agricultural Statistics Service and is being established in the Department of Education in the National Center for Education Statistics.

The Federal-State cooperative system works well when there is a documented need for State and area data. In many cases, however, the burden on respondents as well as the survey costs can be significantly reduced when samples are designed primarily to produce national data.

In most of these cases, BLS data are collected on a voluntary -- not mandatory basis. In fact, the only program at BLS with mandatory data collection is our occupational safety and health statistics program. We have been able to keep our response rates very high under a voluntary system. We get cooperation because our respondents understand the importance of the data we request, find our output useful to them, and recognize the integrity and professionalism with which the Bureau operates. BLS is an agency which produces and analyzes data, but it is also a service agency. We take very seriously our responsibilities in helping respondents to understand our statistical output and how it might be used to help them.

Another approach to burden reduction that we have been working on is the tailoring of our information requests to the computerized records of our respondents, especially the larger ones. We believe that utilization of computer tapes, and eventually of electronic transmission itself, can significantly reduce the impact on respondents of our requests for information. I am pleased to report to you the cooperation, and, indeed, the encouragement from respondents that we have received in this area.

Critical to all that we do, of course, is our pledge of confidentiality. Statistical agencies like BLS make data available only for statistical purposes and then only in such a manner as to make identification of individual respondents impossible. We have an outstanding record on the protection of the confidentiality of our respondents and the data they provide to us. While the foundation of our confidentiality system is secure, we plan soon to consider placing it on a more specific legislative foundation.

I would like to call the Committee's attention to another major initiative in which we at BLS have been involved that will significantly reduce respondent burden while at the same time improving the quality of surveys done by the major statistical agencies. The Paperwork Reduction Act gives authority to the Director of the OMB to designate a particular Federal statistical agency to collect certain types of information to be shared with other specially designated agencies in the Federal system. OMB currently is considering the designation of BLS as the agency in the system responsible for the collection of business list identification information, i.e., names, addresses, etc., which can, under carefully prescribed confidentiality provisions, serve as the universe for the nonfarm sampling work of the major agencies of the Government statistical system. This effort, now well underway, should reduce duplication of effort, help to ensure the comparability of data collected in our decentralized system, and improve the quality of survey samples.

In concluding my prepared remarks, let me say that the experience of the Bureau of Labor Statistics under the Paperwork Reduction Act has generally been a favorable one. While all of us in the statistical system tend to believe that our own programs are the most important, it is necessary often to make trade-offs among equally good objectives. I can tell you that over the years since the Act has been in operation, we at BLS have curtailed or sharply reduced a large number of programs that were useful but not critical. We have done a great deal to reduce the burden of respondents who provide us with the data needed for our statistical series. While we will continue our burden reduction efforts, I do not know how much more can be done without a great deal of research and program redesign. The investment of the resources needed to redesign surveys would have to be carefully considered together with other Government resource needs.

**U. S. Department of Labor**

Commissioner for
Bureau of Labor Statistics
Washington, D.C. 20212

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JUN 22 1989

Honorable Jeff Bingaman
Chairman
Subcommittee on Government
Information and Regulation
United States Senate
Washington, DC 20510

Dear Senator Bingaman:

I enjoyed participating in your Subcommittee's hearing on the Paperwork Reduction Act and am pleased to provide answers to the questions enclosed in your letter of June 12.

1. Your testimony implied that statistical agencies should be treated differently in the paperwork burden budget than non-statistical agencies. Is this your personal view?

As I indicated in my testimony, I believe strongly that we must do all that we can to reduce the reporting burden placed on respondents by the government. However, information required for regulatory purposes is really quite different from information needed for statistical purposes, and it can be quite difficult to make trade-offs between them. Respondents to our statistical surveys frequently are themselves users of the information the survey provides and do not always consider the survey request as onerous as the Act implies. Burden reduction in statistical surveys that results in sample size reductions affects the accuracy of the final output. I am concerned about these issues.

2. Should we create separate paperwork clearance procedures for statistical agencies different from the process used for regulatory and administrative information?

Almost all of the data produced by the Bureau of Labor Statistics is used in public policy. The regulatory process frequently places a very large burden on employers and the procedures for paperwork clearance necessarily require a substantial amount of review time. Regulatory burden is extremely large; it must be weighed against the need for information to impliment legislative goals. In contrast, statistical information constitutes such a small proportion of the toal burden (BLS has less than 3 percent of the total Department of Labor burden), that I would hope that ways could be found to speed up its clearance process. It is also important to recognize that review of statistical burden requires the interaction of statistical agency statisticians with persons with similar qualifications at the Office of Management and Budget.

3. At our last hearing, we received testimony stating that the Federal Government needs to have a more centralized process for statistical policy. Suggestions included either a Chief Information Officer or a Chief Statistical Officer. I would be interested in your comments on these suggestions.

The statistical profession has long been concerned with these issues and has discussed the configuration of our decentralized system and its coordination extensively over the last 50 years or so. There is, in my opinion, no single, correct solution. As you know, Dr. Hermann Habermann currently serves as the chief statistical officer at OMB, and we work very closely with him. He has been extraordinarily effective in ensuring communication but has a difficult task of coordination among the large number of statistical agencies and programs. His office has very large statistical policy responsibilities for a very small technical staff.

I have some concerns about the establishment of a centralized Chief Information Officer. I believe strongly that one of the major strengths of our system is the involvement of each of our agencies with the Cabinet Department in which it is located. I believe each Cabinet Secretary should have strong input into the priorities for policy relevant statistical series and that the OMB statistical policy role can be strong enough to ensure the coordination necessary to provide the comprehensiveness our system needs. Equally important in consideration of the possibility of creating a new Chief Information Officer is that we not, even inadvertantly, politicize the statistical system through the control of information.

4. At that same hearing, Michael Boskin testified about the efforts he is undertaking on the quality of economic statistics. Are you also involved in those efforts as well? What is your general opinion as to what needs to be done to improve economic statistics?

Yes, I have been working closely with the new Chair of the Council of Economic Advisors, Michael Boskin. Dr. Boskin believes that the country needs economic data of high quality, and I welcome his support of the statistical agencies in their efforts to produce such data. The Cabinet Council on Economic Policy recently created a Working Group on Economic Statistics, which Dr. Boskin chairs. I represent the Department of Labor on that group.

I have always believed that statistical agencies cannot stand still. They must continually move to improve the quality of their output, or they will fall behind. In these days of constantly improving design, collection and estimation techniques and of new technology adaptable to statistical work, change becomes a necessary fact of everyday life. The phenomena that we measure are constantly changing, and data series must be constantly analyzed and reviewed to ensure their relevance and accuracy.

But statistical budgets cannot be limitless; we must engage in careful analysis of the cost and the benefit and uses of all of our statistical output. As a whole, the statistical system needs to strengthen its work in trade and on the expanding service-producing sector of our economy. We also need to pay greater attention to the problems involved in data development in areas of rapid technological change.

I appreciate your interest in the work of the Bureau of Labor Statistics and of the U.S. statistical system. I stand ready to provide any help that I can in providing the information you may need in reviewing the Paperwork Reduction Act.

Sincerely yours,

Janet L Norwood

JANET L. NORWOOD
Commissioner

# STATEMENT OF THE

# DEPARTMENT OF DEFENSE

# DEPUTY COMPTROLLER FOR INFORMATION RESOURCES MANAGEMENT

CYNTHIA KENDALL

BEFORE THE
SUBCOMMITTEE ON
GOVERNMENT INFORMATION AND REGULATION
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

June 12, 1989

NOT FOR PUBLICATION UNTIL RELEASED BY THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

## STATEMENT BY THE

## DEPARTMENT OF DEFENSE

## DEPUTY COMPTROLLER
## FOR
## INFORMATION RESOURCES MANAGEMENT

### INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the Department of Defense's (DoD's) information resources management (IRM) under the Paperwork Reduction Act of 1980, as amended.

The Comptroller is the DoD's senior IRM official designated pursuant to the Paperwork Reduction Act of 1980. The Office of the DoD Comptroller has the policy and oversight responsibility for information management and general purpose information technology resources for the Department. As the Deputy Comptroller for Information Resources Management, I am charged with carrying out this responsibility on a day to day basis.

The Department has established a sound management framework for information resources to carry out the responsibilities regarding information management and information technology through policies and formalized processes. These policies cover the full spectrum of information management activities, and we actively exercise oversight for automated information systems (AIS).

I would like to review the actions which have been taken by the Office of the DoD Comptroller in our implementation of the Paperwork Reduction Act of 1980 and Paperwork Reduction Reauthorization Act of 1986. Specifically, I will:

1. describe the DoD IRM structure within the Office of the Secretary of Defense (OSD);

2. describe actions taken to implement the DoD IRM functions under the Paperwork Reduction Act;

3. describe the Comptroller's Industry Interface Initiative;

4. describe our relationships with the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB); and

5. conclude with a summary of our IRM activities.

## IRM STRUCTURE

In 1981, the DoD Comptroller was designated the Senior IRM Official for the Department of Defense pursuant to the Paperwork Reduction Act of 1980. The day to day activities were carried out in the Directorate for Information Resources Management Systems (IRMS) until 1987.

In October 1987, recognizing the importance of IRM to the Department's mission and the size of the information technology investment, the DoD Comptroller elevated the IRM function to the level of a Deputy reporting directly to the DoD Comptroller. This is the position I hold.

In that capacity, I am responsible for planning, developing, managing and enforcing policies, procedures, and standards for the DoD IRM program; for establishing and refining management systems that can be used in reviewing and evaluating IRM policies and procedures; and for planning for future IRM directions, by establishing initiatives, identifying options and opportunities for improving mission performance. In addition to these Paperwork Reduction Act functions, my responsibilities also include developing and enforcing AIS life cycle management (LCM) policies and information processing standards; reviewing and approving all major AIS program plans; developing AIS training, education, and technical assistance programs; and performing a range of essential AIS assessment and planning functions.

The Paperwork Reduction Act of 1980, section 3506(b), recognizes the organization and size of DoD by authorizing the Department to designate more than one IRM official. The Department decided to delegate that authority to each Military Department Secretary who has designated an official responsible for carrying out the Military Department responsibilities within the framework of established DoD-wide policies. This framework has worked well. The DoD Comptroller remains responsible for developing uniform policies and procedures to implement the provisions of the law and serves as the single focal point for Departmental policy positions regarding DoD and Federal IRM.

## FUNCTIONS UNDER THE PAPERWORK REDUCTION ACT

The Department's IRM program, policies, and procedures draw on Federal guidelines documented in OMB Circular A-130, "Management of Federal Information Resources." This provides the framework for carrying out our responsibilities and functions prescribed by the Paperwork Reduction Act. Policies and procedures are established to manage the planning and use of information resources more effectively. DoD implemented the requirements of the Act by the following actions:

- appointing DoD Comptroller as the Senior IRM Official for the Department of Defense;
- establishing the DoD IRM program and developing implementing policies and procedures for such IRM functions as information requirements analysis, IRM reviews, forms and reports management, records management, general purpose information technology acquisition, privacy protection, and information security;
- developing a major information system inventory;
- initiating the DoD IRM review and assessment program;

- developing annual five-year information technology plans;
- establishing an annual target for Information Collection Budget (ICB) with quarterly updates; and
- adapting the Defense Information Automated Locator System (DIALS) for use as the Federal Information Locator System (FILS).

The Department's management and control of information requirements policy establishes the framework for setting annual goals for reducing reporting requirements, periodically assessing information activities, and reporting requirements. The policy stresses the functional area manager's accountability for decisions about information requirements and its related costs.

The DoD's information collection budget, with approximately 263 million burden-hours (as of FY 1989), is second in size only to that of the Department of Treasury. Yet, we have met all OMB reduction goals since the start of the program. About 98 percent of the DoD total, approximately 258 million burden-hours (as of FY 1989), is attributed to information requirements related to acquisition actions, contract deliverables, and DoD Federal Acquisition Regulation Supplement (DFAR) actions.

The DoD Comptroller established an AIS strategic planning policy, which requires each DoD Component to conduct deliberate planning to increase functional standardization and interoperability of AISs. Following the issuance of the AIS strategic planning policy, the Deputy Secretary of Defense, in July 1988, directed selected Assistant Secretaries to analyze their functional information requirements, to take actions to standardize AISs to meet prioritized requirements, and to document and coordinate interoperability actions with the Military Departments and Defense Agencies. This direction was intended to eliminate, to the extent possible, redundancy and minimize AIS assets required to satisfy mission needs.

The DoD IRM review program includes audit activities, management improvement activities, and independent oversight reviews such as the Major AIS Review Council (MAISRC). The reviews have improved the management and oversight of information resources, improved mission support, and improved the cost effectiveness of that support. We have issued guidance for the reviews conducted by the Military Departments and other DoD Components and consolidated the plan updates and synopses for submission to GSA.

The Department's life-cycle management (LCM) policies and procedures provide the framework for AIS management and oversight. LCM is a control process that is applied to expenditures on new AISs and to expenditures for the modernization of existing AISs. It bases all expenditure decisions for each stage of system development to the total anticipated benefits that will be derived over the life of the new AIS, or, that will be derived over the remaining life of the modernized AIS.

The DoD has established a number of management systems to coordinate information management and information technology issues, and to exercise management oversight and control of information system resources. One such management system is the IRM Policy Council, which was established in 1982 to provide a forum for shaping Defense policy matters and for addressing major issues affecting information resource management functions covered by the Paperwork Reduction Act. IRM activities addressed include information collection activities, records management, privacy of records, automatic data processing, office automation, and other information management and information technology issues.

The DoD policy on information requirements includes the registration of internal DoD, interagency and public reporting requirements. Annual goals are established, consistent with OMB guidance and with critical mission needs. The DoD Comptroller has designated a DoD clearance office and the office of record for DoD public reporting. The data profiles of all DoD public reports are on an automated locator system, compatible with the Federal Information Locator System (FILS), established under the Paperwork Reduction Act.

DoD IRM policies establish AIS oversight activities and create an organization and process for conducting those activities at various levels in the Department, commensurate with the size of AIS investment. The MAISRC is the Department's senior LCM review body for each major AIS not delegated to a DoD Component. The MAISRC membership includes functional, Component, and technical representation.

A major AIS is a new AIS, or an existing AIS modernization that (1) has anticipated program costs in excess of $100 million during the period from the beginning of the need justification phase through the completion of the deployment phase of each AIS site; (2) has estimated program costs in excess of $25 million in any single year; or (3) is designated as being of special interest by OSD. All other AISs require conformance to the life-cycle policies and the oversight activities conducted by the respective DoD Component.

The AIS LCM process consists of a sequence of phases culminating in milestone reviews and milestone approval. Milestones are key decision points for determining whether the program should continue to expend resources or not. Depending on the circumstances, interim in-process reviews may be used to evaluate the program and alter program direction. MAISRC reviews assess the status of AIS program planning. These reviews include a comprehensive assessment of the technical, functional, and managerial aspects of the programs.

In October 1988, the DoD Comptroller established a comprehensive quarterly reporting system to improve the visibility of all major AISs. This reporting system includes continuing certification of major AIS program costs, schedules, and other key status indicators. These procedures are expected to provide timely and accurate visibility of major AIS status.

Another management control process established is AIS program baselining. This control process stipulates that changes in AIS programs be managed and controlled for AISs under development. The baseline document is a formal agreement among senior level functional, resource, technical, and program management officials. It documents their common expectations of intended AIS capabilities, resources, and product delivery schedules. The baseline agreement is reviewed by the MAISRC when milestone approval is sought to develop and to field the system. A breach of the baseline agreement requires notification to the MAISRC.

## INDUSTRY INTERFACE INITIATIVE

The Department has developed and implemented several initiatives to support long-term IRM management improvements. In May 1988, the Comptroller published a major policy statement on the future managerial direction of IRM. This policy announced the development and implementation of an Industry Interface Initiative. The initiative recognizes and responds to major IRM challenges the Department faces.

The key element to effective AIS management is qualified, experienced IRM managers. DoD's extensive experience in the full spectrum of activities in IRM has made it abundantly clear that there is a critical need for developing a cadre of technically talented IRM professionals for effectively managing and controlling the Department's vast information resources. Specifically, DoD must develop the ability to compete successfully with the private sector in recruiting and retaining IRM professionals, and promote personnel development policies to attain industry equivalency in the qualifications, experience, and expertise of its information systems work force. The Department has requested the Office of Personnel Management to establish an information systems manager classification standard and series. I believe this initiative will improve recruitment and retention because it will create opportunities for professional development and for career progression.

A second key element of effective AIS management is an education and training program for AIS program managers. The DoD Comptroller and the President of the National Defense University announced jointly that the DoD Computer Institute would become a college of the university, the curriculum reoriented to emphasize AIS program management, and educate and train senior IRM officials, AIS program managers, and professional staff. This initiative is expected to produce major long-term AIS program management improvements as well as providing education and training opportunities.

A third key element of the Industry Interface Initiative is information processing standards (IPS). The Department is pursuing the development of IPS through both government and nongovernmental standards-making organizations. In 1988, DoD representatives assumed leadership positions in key National nongovernmental standards-making organizations operating under the procedures of the American National Standards Institute. Because many information processing standards are being developed under the jurisdiction of the International Standards Organization, the Department is pursuing more actively the development of AIS interoperability standards through these organizations as a complement to our Federal and National effort.

## RELATIONSHIPS WITH OMB OIRA

As the Senior IRM Official, the DoD Comptroller serves as the DoD negotiator, representative, and focal point for all DOD IRM policy or program matters. In this regard, the Comptroller organization has worked frequently with the OMB OIRA staff on information management policies and guidance, the information collection budget, the FILS, the five-year information technology plan, and the electronic dissemination of Federal Government information. These interactions between the organizations began early with the original Paperwork Reduction Act and they have continued to the present. The DoD has found these interactions to be both effective and efficient and we have specifically achieved progress in the following areas as a result of these efforts.

The DoD Comptroller prepares the Department's information collection budget (ICB), advises DoD Components of actions necessary to comply with the paperwork reduction goals, and submits the ICB to OIRA. In turn, each DoD Component coordinates the requirements for the public and interagency collections of information that are the basis for the ICB, as required by DoD Comptroller policies and procedures. DoD policies and procedures are based on the policy guidance provided by OMB. The DoD information collection inventory database has been established and is used for on-line tracking of the time burden of information collections, as a source for publishing a list of approved reports and forms, and as a source for reporting governmentwide information management activities to OMB.

We work closely with OIRA on the development and implementation of governmentwide guidance related to the Paperwork Reduction Act. For example, we are currently reviewing and providing comments on the guidance on electronic dissemination of information and possible consolidation of two OMB circulars. In 1984, the DoD provided comments on the draft OMB Circular A-130, "Management of Federal Information Resources," and discussed the policy and procedural guidance with OIRA staff. The consolidation of four OMB circular policies into Circular A-130 and placing the procedures in the appendices together with the explanatory document has made the final product more readable and understandable.

In 1982, the Department of Defense entered into an agreement with the Office of Management and Budget to assist the latter in establishing and operating the Federal Information Locator System (FILS). FILS became operational in 1983. It provided Federal agencies with a mechanism to identify duplicative information collection requests. Until 1988, the DoD provided technical leadership for the management and operation of the FILS. With the successful accomplishment of the original purpose of the FILS, both agencies agreed to transition the management of the FILS system back to OMB in 1988.

In the area of planning, DoD and OMB have worked together to meet OMB's needs in the five-year ADP and Telecommunications Plan by defining a workable cost threshold for DoD systems, and by ensuring that the planning and preparation activities for this information would provide the most benefit to both the DoD and OMB.

Consistent with the requirements of the Paperwork Reduction Act to direct standardization activities into appropriate and productive areas, DoD, in early 1988, proposed a new policy initiative on information processing standards to OMB. Specifically DoD proposed the establishment of a high-level Executive branch council to identify problems, establish priorities and propose Federal strategies and directions for information processing standards. OMB accepted the recommendation and has since established two standards committees under the Department-Level Working Group, one for user requirements and the other for standards policy. I am participating as the principal DoD member on the standards policy committee, and my staff will participate in the user requirements committee when it is convened.

DoD looks forward to the continuation of its relationship with the OIRA organization.

CONCLUSIONS

The Paperwork Reduction Act establishes the principles and the regulatory structure for strengthening, coordinating, and managing IRM in the Federal Government. We have implemented the structures and processes for the management of information resources, including the management of the information technology necessary to collect, process, store, and disseminate information. The Act has had a strong and positive influence on both information and information technology in the Federal government. It has provided the legal authority and foundation for IRM planning. The Act contains the necessary provisions that support our initiatives to focus attention on information management activities and AIS management, interoperability, and standardization.

I believe DoD has successfully carried out our responsibilities under the Paperwork Reduction Act. We have:

o established a DoD IRM program and developed implementing policies,

- updated and strengthened our information technology management oversight policies and procedures,
- reduced the paperwork burden on the public,
- elevated and restructured our IRM organization, and
- established future managerial direction for DoD IRM.

From the perspective of the Department of Defense, the foundation has been established for managing information.

We have initiated actions in several areas critical to the future managerial direction of IRM in DoD: 1) requested OPM approval for establishing the information systems management classification, 2) initiated upgrades for IRM education and training, and 3) revitalized the DoD information processing standards program. Our initiative on the personnel classification has governmentwide applicability for improving IRM and recruiting and retaining highly qualified IRM career professionals.

The Department is committed to the Paperwork Reduction Act and its goals. We have been successful in achieving these goals, and we anticipate taking other important initiatives to further strengthen the foundation for sound IRM within the Department.

Mr. Chairman, that concludes my prepared statement. I am prepared to address the Subcommittee's questions.

OFFICE OF THE COMPTROLLER OF THE DEPARTMENT OF DEFENSE
WASHINGTON, DC 20301-1100

Information Resources
Management

JUL 14 1989

Honorable Jeff Bingaman
Chairman
Subcommittee on Government
Information and Regulation
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

This responds to your June 12, 1989 request for a written response to questions posed as a followup to the hearing on the reauthorization of the Paperwork Reduction Act.

Enclosed are our answers to five of the six questions posed. Our answer to question number four is being coordinated with the Office of Management and Budget (OMB) and will be forwarded as soon as possible. I hope this information will be of assistance to you and the Governmental Affairs Subcommittee on Government Information and Regulation.

Sincerely,

Cynthia Kendall
Deputy Comptroller (Information
Resources Management)

Enclosures

cc: Honorable Warren B. Rudman
Ranking Republican

**QUESTION 1:** In his testimony, Assistant Comptroller General Carlone described some major problems in acquiring and developing systems that DoD has encountered. Will the increased attention to information resources management in DoD which you have discussed have a major impact on future system development efforts?

**ANSWER:** Yes. The Department's increased attention to information resources management will have major impacts on future system development efforts. For example, the updated DoD Automated Information System (AIS) life-cycle management policy and the new AIS baselining policy are expected to have major positive impacts on future system development and control efforts. In addition, the new quarterly reporting process for major AIS's is expected to provide increased visibility into AIS development efforts for improved AIS life-cycle management oversight. The Department has established a solid AIS life-cycle management policy and oversight framework for effective information resources management and will continue to improve the framework and DoD information resources management.

QUESTION 2: Does the PRA provide an adequate framework for agency IRM? Are there enhancements or modifications to the Act which would contribute to improved agency operations? Are there provisions of the Act which have outlived their usefulness?

ANSWER: The Paperwork Reduction Act (PRA) provides an adequate framework for agency IRM. The Act has had a strong and positive influence on collecting, using, and disseminating information and acquiring information technology in the Federal government.

The Act could be enhanced by including a provision for OMB to identify problems, establish priorities, and propose Federal strategies and directions for information processing standards, with appropriate agency participation.

The Department has not identified any PRA provision which has outlived its usefulness.

**QUESTION 3:** You pointed out in your testimony that the Department has consistently met all of the paperwork reduction goals established by OMB. However, one of the continuing complaints we hear involves the massive documents required in the DoD procurement process. Are there additional steps which would help alleviate this problem while still providing the Department the information needed to conduct its procurement activities?

**ANSWER:** The Department is involved in a continual program to review and validate the need for each information collection requirement for DoD acquisitions. We screen recordkeeping and reporting requirements as part of our continuous maintenance of the Defense Federal Acquisition Regulation Supplements. These reviews seek to reduce paperwork while not eliminating the collection of mandatory acquisition data.

The Department must, however, comply with each additional statutory requirement in the acquisition process. When additional information collections are required to comply with legislation regarding the defense acquisition process, the addition is reviewed to avert duplication of information already obtained and to minimize the data to satisfy the requirement.

The Department also solicits public comments and suggestions on ways to reduce the paperwork burden associated with acquisition contract deliverables. For example, an intensive public and industry review of the Acquisition Management Systems and Data Requirements Control List (AMSDL) is nearing completion and should result in substantial paperwork burden reductions.

Any additional paperwork reduction steps by the Department will likely involve the use of automated information systems to promote the sharing of technical data and to reduce the time to prepare solicitation and deliverable documentation. We are optimistic that the Computer Aided Logistics Support (CALS) Initiative will make substantial burden reductions in acquisition paperwork.

Although we agree that procurement regulations should not be promulgated without providing interested parties the opportunity to express their views, requirements to quantify cost benefits and or burden hours and develop multiple justifications result in additional time required to develop and issue necessary procurement regulations. We question the categorization of certain items as paperwork burdens for purposes of the PRA. Paperwork products such as drawings, operation/maintenance and training manuals, and reports resulting from studies are purchased as end items and normally directly paid for under DoD contracts. Nevertheless, they are treated as "burdens" for purposes of the PRA. We believe that these items should not be considered as burdens for purposes of reporting under the PRA.

**QUESTION 4**: We understand that the Department requested that OMB exempt acquisition regulatory matters from the information collection budget. With regard to that request, what reason did OMB give for denying the request?

Also, since the greatest paperwork burden on the public and on businesses comes from activities such as procurement paperwork, income tax forms and other information collection activities required for "doing business with the government," or carrying out key government functions, does it make sense for OMB to continue to review information collection budgets in the same way?

**ANSWER**:

When the original request was made in 1987, it was part of a larger Department of Defense legislative package. The Office of Management and Budget advised that it would not be approved at that time as they disagreed with the Department of Defense assessment that acquisition regulatory matters should be exempt from the Act. DoD withdrew this request in order to facilitate the approval and submission of the remaining, approved, legislative items to Congress in time to be considered for enactment by the 100th Congress. These items were submitted to Congress on March 31, 1988.

The Department has already made substantial reduction in its information collection requirements in discretionary areas and is looking at collection methods that are less burdensome, such as automated collections.

**QUESTION 5**: Could you tell us more about the request you have made of the Office of Personnel Management to establish an information systems manager classification standard and series? What would this include? What has OPM done in this area?

**ANSWER**: DoD has requested approval of an Information Systems Manager classification to provide benefits in two areas: (1) improvement of DoD's ability to manage, develop, implement, test, and maintain its AIS's and (2) improvement of career path expectations for individuals covered by the classification.

Present classifications, such as computer specialist and communications specialist, do not include the range and depth of skills, knowledge, and abilities for DoD information systems management positions. The work associated with DoD information systems management positions includes:

(1) Program management for the development, acquisition, and implementation of AIS's;

(2) Formulation and implementation of long-range AIS architectures;

(3) Development and analysis of concepts of operations and capabilities of AIS support;

(4) Analysis of plans, policies, programs, and directives to determine requirements; and

(5) Life-cycle management of AIS's, to include the management of operations and maintenance of AIS's, networks, and facilities.

DoD proposed the information systems manager job classification and series to OPM in February 1987. Since then, we have corresponded with OPM on the series. OPM has suggested we use the General Series 301 for information systems management positions that do not fit within any existing series in the meantime while they are reviewing our request.

QUESTION 6: You mentioned two standards committees OMB established under the Department-Level Working Group. Could you briefly describe the Department-Level Working Group and give your views on the utility of such inter-agency groups. I understand that these groups are set up at the discretion of OMB. Is there a need to make provision for such groups in the PRA?

ANSWER:

The Department-Level Working Group (DLWG) was established and chaired by OMB as a forum for discussing IRM policies, issues, and intitiatives. Participating members include senior IRM managers representing Federal agencies. The DLWG is a consultative and advisory working group. As such, it serves the useful purpose of providing a forum for discussion and inter-agency cooperative work on issues and initiatives of common interest. As currently structured, there does not appear to be a need for making a provision for such advisory groups in the legislation.

### STATEMENT OF RICHARD H. HOPF, III
### ACTING COMMISSIONER
### INFORMATION RESOURCES MANAGEMENT SERVICE, GSA

Good morning Mr. Chairman and members of the subcommittee. The General Services Administration (GSA) appreciates the opportunity to testify again on this important issue.

The Paperwork Reduction Act of 1980 (P.L. 96-511) and the Paperwork Reduction Reauthorization Act of 1986 (P.L. 99-500) were landmark pieces of legislation. They have affected the direction of information management in the Federal Government. Since 1980, the General Services Administration (GSA) has re-oriented its governmentwide Information Resources Management (IRM) leadership program in many ways to implement the intent of the Act. We have taken a broad view of our responsibilities to provide agencies with policy, planning, evaluation, and training to help ensure implementation of the two Acts.

The Acts provide GSA with uniform authority for ADP and telecommunications and they provide a new emphasis on records management. Previously, GSA had operated under different authorities across the three functions. This had resulted in different policies and procedures in, for example, major ADP and telecommunications acquisitions.

The Act foresaw the merging of the ADP and telecommunications technologies. By providing GSA with uniform authority, Congress permitted us to move in the direction of uniform regulations, uniform policies and uniform procedures to be followed by agencies when requesting procurement authority from GSA.

The new authorities provided by the Congress led GSA to a review of the full spectrum of information systems initiatives in individual agencies and on a governmentwide basis. Several important programs resulted.

- Uniform authority meant that the Federal IRM regulations (FIRMR) could be rewritten to bring ADP, telecommunications, and records management into alignment. While we were doing this job, it was decided to completely rewrite the FIRMR regulatory system to make it easier for agencies to use. This was a major two year effort which is now concluding. Agencies are very pleased with the easier to use, more consistent policies that are now circulating for review in draft form.

- Uniform authority also caused us to expand the scope of our Procurement Management Reviews (PMR's) in agencies. Initially, the focus was on ADP issues. Today, the reviews address telecommunications and records management issues in agencies. I might mention that we have completed 25 major reviews in agencies. These reviews have resulted in many changes being made by Agencies to strengthen their overall IRM management and acquisition programs.

In the remainder of my testimony, I will briefly discuss the nine additional major initiatives that GSA has undertaken since the original Act was passed in 1980:

1. GSA has assisted the Office of Management and Budget in the development of annual governmentwide ADP/Telecommunications Plans. The first Plan was published in 1983. The format and content has changed and improved each year as more experience is gained with governmentwide planning and as technology and the Federal environment continue to evolve. The 1988 Plan was the best yet and we anticipate continuing improvements every year into the future.

2. GSA created a new organization to develop the Federal IRM Triennial Review Program to evaluate agency information activities as required by the Act. This GSA program requires each Agency to perform internal reviews and ensure that it is

meeting its responsibilities under the Act. GSA evaluates Agency activities annually. At the end of each review cycle, GSA reports to the Office of Management and Budget and assesses the accomplishments of the overall program and the status of individual Agency programs.

The first complete cycle ended at the conclusion of fiscal year 1988. A new report, "Federal Information Resources Management Review Program, March, 1989", summarizes the accomplishments of this first cycle.

This review program has led to several positive trends in Federal Agency management. First, most Agencies are showing an increased management awareness of and involvement in information resources issues. This is demonstrated by a more coordinated effort in planning, budgeting, and acquisition of resources. Agencies are using the review program to monitor progress in Agencywide management of information resources. Many Agencies are using the review program in conjunction with or in place of separate information collection activities. Others use the review program to monitor program against their Five Year ADP and telecommunications plans.

3. GSA consolidated its IRM resources consistent with suggestions made in the legislative history. GSA reviewed its governmentwide central agency activities in ADP, telecommunications, and records management. These were reorganized and consolidated into one organization after the Act was passed.

As a result of these changes, a single organization in GSA is now responsible for developing integrated regulations and policies for ADP, telecommunications, and records management. Another organization is responsible for providing to all agencies assistance on a reimbursable basis for all services provided in ADP, telecommunications, and records management.

These actions have set a good example for agencies in the realignment that should be considered when implementing the Paperwork Reduction Act. Also, they provide more consistent policy across the three legs of the IRM function; and, they bring telecommunications and records management into the limelight with ADP which had been the more dominant function since the early 1960's.

4. GSA has worked to strengthen the role of the single designated official for Information Resources Management. GSA delegates its exclusive procurement authority for computers, networks, and all other IRM acquisitions only to the single designated official or his/her designee. Further, GSA conducts all of its review and information gathering activities through this official. Finally, conferences were held in 1981 and 1985 to acquaint newly appointed executives with the requirements of the Paperwork Reduction Act and other legislation governing the IRM field in the Federal government.

5. GSA has implemented Congress' intent that delegations of procurement authority be given to individual agencies for all procurements for a period of time rather than on a case by case basis. Through the Procurement Management Reviews, it has been possible to evaluate the planning, management, and procurement

programs in agencies. This permits us to provide higher than average blankets of delegated procurement authority to agencies with good programs. It also permits lower than average blankets when they are warranted. This allows GSA to operate in a true leadership role rather than being mired down in individual case reviews.

6. GSA has developed the Trail Boss program in response to governmentwide research and in response to Congress' encouragement to GSA to delegate broadly to single designated officials when they have the experience, resources, and ability to carry out major acquisitions. The Trail Boss Program is designed to develop more Federal managers with the knowledge and ability needed to carry out major systems. It gives Federal managers more authority and capability to plan, procure, and deliver new technology systems. It is a spin-off from the "Go-For-12" program which was designed to find ways to speed up the acquisition process. Under the new program, agencies designate a single, highly skilled individual (the "Trail Boss") to be the ultimate authority for producing a timely and cost-effective system, from start to finish. GSA provides early delegations of authority and works with agencies and "Trail Bosses" to provide the assistance necessary to ensure success.

The "Trail Boss" is responsible for acquiring and implementing major computer and telecommunications systems. Like the old Trail Boss in the days of "westward-ho" and gold fever, the twentieth century Trail Boss leads the team toward a common goal -- A successful major information system.

After years of emphasizing process and control in the management of major systems in the government, the Trail Boss program shifts the emphasis to the individual who does the work. The Trail Boss is the next logical step in Federal systems management.

In addition to focusing on the individual rather than process and control, the new program emphasizes three functions:

- Early delegation of authority.
- Building a new support environment.
- Developing a reward system for successful Trail Bosses.

There are important benefits in the Trail Boss program

- A single manager (or deputy) is in charge from start to finish to provide continuity.

- A shift in emphasis is made from process and procedure toward the individuals who do the work.

- Better selected and trained managers facilitate faster and smoother acquisitions and implementations.

- Early delegation of procurement authority from GSA facilitates agency action.

- Computer/telecommunications systems vital to Government are acquired and implemented faster and more effectively.

7. GSA is implementing the Information Technology (IT) Fund provisions of the Act. The Information Technology (IT) Fund was established on January 1, 1987, under the Paperwork Reduction Reauthorization Act of 1986. This new Fund consolidates the assets, liabilities, and capital of the previously existing Federal Telecommunications (FT) and Automatic Data Processing (ADP) funds. The new IT Fund has the authority to accumulate 125 million dollars for FTS2000 conversion, contigencias and working capital. An Operating Cost and Capital Requirements Plan for the fund is submitted annually by GSA to the Office of Management and Budget (OMB) for review and approval. The 125 million dollar reserve is to be accumulated through rates established and approved by the Administrator.

   This is a new territory for GSA and we are proceeding with care. Our intent is to keep rates stable during the transition to major new services.

   An important goal is to accumulate sufficient capital reserves so that unanticipated requirements, particularly those arising during the FTS2000 transition, do not require sudden extreme increases in rates. The new authorities provided in the legislation establishing the IT Fund will help eliminate year-end swings and other problems that occurred before the Reauthorization Act.

8. "Welcome to Information Resources Management in the Federal Government" has been developed for new administration officials entering the government in 1989. New appointees in the Federal environment frequently are confused about Information Resources Management. This is a complex field where it is often

difficult for newcomers to understand the range of functions and issues and to know the complex legislative history and the range of organizations that have a role in IRM decisions.

This GSA report was prepared with the assistance of senior IRM officials from seven Federal agencies. It is designed to assist newly appointed Federal executives who will have responsibility for managing information resources in Federal agencies.

This document briefly describes the role of IRM in the Federal government and how Federal IRM differs from the private sector. The text also provides a status report for the Federal IRM community and a view of the major areas in which Federal managers can make an impact.

This easy-to-read document is a part of GSA's program to spread knowledge and understanding of Federal IRM to a broader and more senior level.

9. To Assist Career IRM Managers "The Federal IRM Manager: Major Roles and Responsibilities as We Move Into the 1990's" has been prepared. Many Federal managers have asked over the years for a document that they, their bosses, and their subordinates could use to better organize their IRM functions. This report prepared by GSA with the assistance of three of the most experienced career IRM managers in agencies was developed to meet this need.

As the first decade of IRM implementation draws to a close, it was important for us to examine the key roles and responsibilities of senior IRM managers and to identify which of those will continue to be significant as we move into the 1990's.

There are three critical challenges to the Federal IRM Manager in the next decade. These are increased emphasis upon information management, the continued growth of end-user and departmental computing, and modernizing major agency systems through competition and vendor support.

This report is a resource to assist Federal managers in improving the management of their agency's information resources. It does the following things:

- Outlines the primary functional responsibilities and key characteristics of the Senior IRM Managers;
- Assists newly appointed Senior IRM Managers in establishing an integrated IRM organization;
- Provides agency program managers with a better understanding of the relationship between IRM and their mission requirements;
- Describes to Designated Senior Officials the IRM concept and those functional responsibilities included under the IRM umbrella;

I should note that this has proven to be one of the most popular of the 50 publications we have produced in recent years.

In conclusion Mr. Chairman, GSA has been very enthusiastic about the Paperwork Reduction Act and the Paperwork Reduction Reauthorization Act. We have reorganized, transferred resources, and perhaps gone further than required by the legislation. This has been done because the framework provided by Congress encourages innovation in the management of Federal IRM resources. Because of the two Acts, IRM is better managed today all across the government. We are better organized, better focused on functional integration, and better prepared to deal with the emerging technology and the future.

General Services Administration
Information Resources Management Service
Washington, DC 20405

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JUN 26 1989

The Honorable
Jeff Bingaman
Chairman, Subcommittee on Government
  Information and Regulation
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I appreciated the opportunity to testify before your Subcommittee on the important issues currently affecting information management in the Federal government.

In this letter I am responding to the four questions submitted in writing after the hearing.

QUESTION:

1. In your testimony, you mentioned the Federal Triennial Review Program. I understand that OMB has delegated to the General Services Administration (GSA) the responsibility for review of agency information resources management required by section 3513 of the Paperwork Reduction Act (PRA). That review is supposed to assess the adequacy and efficiency of agency IRM activities and to ascertain their compliance with section 3506. Can you brief us on:

a. The status of that review effort? When can we expect to receive the required reports?

ANSWER:

GSA established the Federal IRM Review Program to meet the requirements of the PRA. Beginning in 1986, agencies conducted reviews of their IRM activities and reported results to GSA in the form of an annual report. The program completed its first cycle this year and GSA forwarded the first report, entitled Federal Information Resources Management Review Program Final Report, FY 1986-1988 Review Cycle, March 1989 to OMB. It is anticipated that the report will be submitted to the Congress when OMB completes its review.

QUESTION:

b. Based on your review activities can you provide some overall view of how well the agencies are implementing information resources management?

ANSWER:

GSA found that agencies have made great improvements in the management of information resources since passage of the Paperwork Reduction Act. Agencies made a concerted effort to evaluate IRM activities comprehensively and found opportunities for improvement. GSA believes that not only are agencies in compliance with the requirements of the PRA, but also their compliance has been enhanced as a direct result of their review activities.

The three year review effort revealed that there were three major trends. GSA found that agencies which had the most successful IRM programs were those that enjoy substantial senior management attention, as had been anticipated by the PRA's designation of a single responsible official for IRM. Agencies discovered opportunities for improving their information management by increasing their use of technology, enhancing the effectiveness and cost efficiency of their computer software, and refining the related policies and procedures. And, agencies have strengthened IRM procurement management, especially for the quickly proliferating microcomputer acquisitions.

QUESTION:

c. Do you have any recommendations for changes in the PRA, particularly in regard to the section on agency activities?

ANSWER:

Now that agencies have had nearly 10 years experience in implementing the IRM concept they have found ways to improve on the intent of the PRA. Agencies have begun to bring IRM planning in line with program planning to ensure that information resources support the agency mission and priorities. Additionally, more and more agencies are focusing on the information requirements and not just the technology requirements. The PRA currently only requires agencies to develop a 5-year plan for technology needs. It would be useful for the reauthorized PRA to require agencies to develop a connection between information planning and technology planning.

Another area that might be addressed in the reauthorization of the PRA is that of agency reporting requirements. Currently, the law makes no distinction between an agency with information technology resources of billions of dollars versus one with only a half-million dollars. Yet, by statute the smaller agencies are bound by the same reporting requirements as the larger agencies. For extremely small agencies with limited resources this can become burdensome - and can actually divert resources from more critical program activities. The implementing programs are responsible for the reporting requirements and GSA has tried to be responsive to small agencies special needs in the Triennial Review Program. But we believe that this reporting exception could be extended to other reports, as well.

QUESTION:

2. Since you have responsibility for consulting with OMB on the development of the 5-year plan for meeting the ADP and telecommunications equipment needs of the Federal government, could you comment on the plan, on the process for developing it, and on whether this provides us with an adequate picture of where the government is going in terms of using information technology to meet agencies mission needs.

ANSWER:

The annual 5-year plan for meeting the ADP and telecommunications equipment needs of the Federal government has evolved and improved since its first publication. In recent years Federal agencies have provided input to OMB for inclusion in the 5-year plan. These "Agency Strategic Overviews" provide a summary of the current agency information technology activities. OMB then coordinates with the National Institute of Standards and Technology and GSA to develop pertinent articles to be published in the plan each year. Volume I of the plan is a listing of agency information technology budget data. The plan is perhaps the only document which provides this aggregate information on Federal IRM activities.

However, improvements can be made. In the future, it would be beneficial to have an overall analysis of Federal IRM activities to evaluate technology trends and lessons learned from a governmentwide perspective; and, we are moving in this direction. In the nine years since passage of the PRA agencies have become more adept at strategic IRM planning and are more equipped to provide information to permit this type of analysis.

QUESTION:

3. It has been said that the goal of the GSA is a paperless electronic government by the year 2000. Is that true and what does it mean?

ANSWER:

It is an overstatement to say that GSA's goal is to have a paperless electronic government by the year 2000. GSA's objective is to help each agency acquire the technology that it needs, when it needs it, and at a competitive price. Agencies have made important changes in the 1980's, in how they use technology to do their jobs, what they do, and their organizational structures. These trends will continue for the foreseeable future. Nevertheless, we anticipate that paper, as output medium, will be widely used for many years.

QUESTION:

4. What is the status of GSA's effort to revise the Federal Information Resources Management Regulation (FIRMR)? Do these regulations deal only with the ADP acquisition process or do they cover a wide range of information resource management issues? Are there any key lessons learned from the revision process that we need to know as we look into revising the PRA?

ANSWER:

GSA calls its overall effort to revise the FIRMR the "FIRMR Improvement Project". Under this project we have issued a notice of proposed rulemaking (NPR) to obtain public comments on a FIRMR amendment consolidating and streamlining the FIRMR's contracting rules. We are in the final stages of reconciling comments on this proposed rule and expect it to be published as a final rule this fiscal year. The remainder of the FIRMR changes dealing with the management and use of ADP and telecommunications resources and records and information management have been drafted. They are undergoing management review prior to the submission of an NPR to start the public comment phase. We hope to issue these changes as a final rule this calendar year.

Although much of the FIRMR deals with ADP acquisition, it also covers the telecommunications acquisition process and many other information resources management issues. These include strategic planning, disposition of ADP and telecommunications resources, the Federal IRM Review Program (known as the Triennial Review Program), authorized use of long-distance telephone services, records management and the use of GSA services and assistance programs.

The lessons learned to date in revising the FIRMR do not relate directly to the Paperwork Reduction Act. This is due largely to the fact that in the early stages of the project we have been concentrating on contracting issues, which relate to the PRA less than the FIRMR changes that will be proposed for public comments later this year.

If there any further questions on these important subjects, Frank McDonough may be contacted on 566-0291.

Sincerely,

Richard H. Hopf, III
Acting Commissioner

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

## STATEMENT OF S. JAY PLAGER
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION
AND REGULATIONS
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
CONCERNING REAUTHORIZATION OF THE APPROPRIATIONS FOR
THE PAPERWORK REDUCTION ACT
June 16, 1989

Mr. Chairman, it is a pleasure to appear before you today to discuss the reauthorization of appropriations for the Paperwork Reduction Act. The Office of Management and Budget (OMB) believes the Paperwork Reduction Act provides a framework for managing the Federal Government's collection, use and dissemination of information, and the associated information technology. As the Administrator of the Office of Information and Regulatory Affairs created by the Act, I look forward to assisting you in reviewing our role in the Act's implementation.

The Act's objectives are several. They include minimizing the Federal paperwork burden on the public; maximizing the usefulness while minimizing Federal costs of collecting, maintaining, and disseminating information; ensuring the effective acquisition and use of information technology in a manner that improves service delivery and program management; and ensuring compliance with laws relating to confidentiality. These objectives are designed to reinforce each other and improve overall information resources management by the Federal government.

To achieve these objectives, the Act established new management and accountability structures and processes in OMB, and, importantly, in the executive branch agencies. This framework, which includes visible and accountable officials for information resources management, has enabled agencies to manage their information resources better. It also enables Congress to pinpoint responsibility for information activities in its legislative oversight activities.

In the 1986 amendments to the Act, Congress expanded the existing opportunities for meaningful public participation in the government's management of information resources. Jefferson's observation of two centuries before, that "information is the currency of democracy," is all the more applicable today. In the information age, information technology is fundamentally changing the way information is collected, used, and disseminated by the

Federal government. As information and associated technology consume a greater portion of public and private resources, the management of these resources, and public participation in that management, become more critical. We believe the Act, which was visionary in its recognition of information as a resource, has shown its value in improving the way the government manages that resource.

The Act has provided a framework and authorities to allow us to undertake a number of important initiatives. We have developed and maintained a comprehensive set of information resources management policies. Our recent proposals to amend these policies generated a large amount of public response and some controversy. We are pleased that the process of regularly consulting the public as to how these policies can be improved helped show us the inadequacies in the proposals. Yesterday we published a notice withdrawing our earlier proposals and responding to the many constructive suggestions we received.

We have reduced substantially the paperwork burden on the public, and have instituted new procedures to alert the public of the burden that the government imposes so as to ensure timely and meaningful participation in further reducing that burden. We have revised the standard statistical industrial classification code and are undertaking a major initiative to improve the quality of Federal economic statistics. We have provided guidance to the agencies to ensure the protection of privacy in records generated by long distance telephone calls and will soon provide guidance on the matching of computer databases. We have issued guidance to strengthen computer security planning in the agencies and are working to help review those plans. We have reviewed key Federal information systems, such as the air traffic control system and FTS 2000, in order to ensure their success and cost-effectiveness. As a result of our experience in these reviews, we are asking the public for its views on the establishment of a center for information technology management to provide objective advice to senior agency officials attempting to manage these large information systems. In the balance of my statement I will attempt to elaborate on some of our major activities and describe some of our future plans.

## General Information Policy

The Act requires the Director of OMB to develop and implement uniform and consistent information resources management policies. A major step in discharging this function was the issuance of OMB Circular No. A-130, Management of Federal Information Resources, in December 1985. The Circular set basic guidelines for the collection, processing, and dissemination of information by Federal agencies, and for the management of Federal information systems and technology. The Circular also revised existing directives on privacy, computer security, and cost accounting for Federal computer and telecommunications facilities. When the Paperwork Reduction Act was amended in 1986, Congress recognized that OMB should continue the Circular in some form, requiring that OMB "maintain a comprehensive set of information resources management policies." (44 U.S.C. 3505(5)) The Circular has caused agencies to plan and carry out their information activities more carefully, and to measure their programs against a comprehensive policy yardstick.

OMB has also worked with the National Archives and Records Administration and the General Services Administration to improve records management in the Federal Government. In particular, we are attempting a coordinated approach to electronic records management. Just next week we will be participating in an interagency conference on electronic records management.

OMB has sought in other ways to develop new guidance to keep pace with rapid changes in information technology. In 1987, we issued proposed policy on electronic collection of information. In January 1989, we published an advance notice of proposed policy on electronic collection of information.

From the outset, OMB has attempted to develop information resources management policy in an open and participative manner. At each stage of policy formulation, we have sought public comment, holding informal meetings with interested parties and showing ourselves willing to listen. Just this week, we published in the Federal Register a summary of comments received from the January 1989 notice, our initial reaction to the comments, and a statement of our willingness to reconsider and revise not only the January 1989 notice, but also Circular No. A-130. We have announced that, to avoid possible confusion among the public, we are withdrawing the advance notice of proposed policy published last January. Based on the public comments we have received and expect to receive, OMB will review Circular No. A-130, the basic information policy framework, and scrutinize afresh those portions dealing with the collection and dissemination of information.

In conducting this review, and in developing guidance for the future, we propose to be guided by the following principles:

o The nation benefits from the fact that government information is disseminated by Federal agencies and also by many nonfederal parties, including State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

o Over and above their responsibilities to provide access to information under the Freedom of Information Act, the Privacy Act, and the Government in the Sunshine Act, Federal agencies have a general responsibility to disseminate information:

- as appropriate to the pursuit of their mission and program objectives; and,
- in the interest of assuring that the public is appropriately informed.

- Agencies must discharge their information dissemination responsibilities in a manner that:
  - assures the public reasonable and equitable access to government information; and,
  - is efficient and economical.
- Agencies should discharge their information dissemination responsibilities by taking full advantage of all dissemination channels, foremost among which are the Federal depository libraries, but also including other Federal agencies, State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

We are aware, not only because of our experience with Circular No. A-130 but also because of comments received on the January 1989 notice, that parts of our existing and proposed information resources management policy have met with mixed reviews. We believe that our differences of opinion with most of our critics as to policy principles are less great than appears to be the case, except perhaps in the matter of resource allocation: that is, who pays? Nevertheless, we are continuing to seek out our critics and sit down with them to discuss differences.

As we have consistently done in the past in discharging our information policy responsibilities under the Act, we will develop the policy in an open and participative manner. At each step in this policy formulation, we will publish our work for public comment, and we will continue to meet with all interested parties to learn their views. We will of course also take into account congressional concerns with respect to these matters.

We anticipate that by the fall of this year we will be ready to publish for comment a revised formulation of information collection and dissemination policy. We may never reach a full consensus over the principles of Federal information policy, but we would like to be able to say that we have labored intensively to address our differences and that none of the major parties that disagree with OMB has failed to receive a full and fair hearing.

## Reducing Paperwork Burden on the Public

To pursue the goal of minimizing the Federal paperwork burden imposed on the public, OMB and the collecting agencies are required to examine the reporting and recordkeeping requirements they impose on individuals, State and local governments, small businesses, and other entities.

Each year OMB reviews between 3,000 and 4,000 individual agency information collection requests to determine whether they meet the statutory criteria: (1) are they necessary for the proper performance of the agency's function? (2) will they have practical utility for the agency? (3) do they avoid duplicating existing information collections? and (4) do they not unduly burden the public? Through this process, OMB can identify and prevent information collection activities that are of marginal use, duplicate existing collections, or may be accomplished by using less burdensome methods. When problems appear to exist, OMB meets with the sponsoring agency to encourage modifications to the planned data collection activities that will improve the collection.

In 1986 Congress directed OMB to establish goals for agencies to reduce Federal paperwork burdens by 5 percent for each of four fiscal years beginning in FY 1987. In addition to case-by-case examination, OMB has established a government-wide process of planning for reductions in burdens on the public, called the Information Collection Budget. Through these processes we and the agencies reduced the paperwork burden on the public by 63 million hours in FY 1988. Without the procedures that the Act has provided since FY 1981, Americans this year would be spending over 500 million more hours to comply with government paperwork than they do.

We believe the Act also gives OMB the responsibility to ensure that the Federal government obtain needed information on a timely basis. For example, in November 1988 I wrote to the Assistant Secretary for Health at the Department of Health and Human Services (HHS) suggesting that we meet to discuss coordinating the collection of AIDS-related data. During a full day briefing on this subject, OMB and HHS came to a clear understanding about the OMB process and how it could function to expedite requests for approval of AIDS-related research. OMB had actively supported a feasibility study for a nationwide HIV seroprevalance (the presence of the AIDS antibody in the blood) survey. Although there are still doubts about the feasibility of a full survey, the pretest is in fact now being conducted. If a full scale household seroprevalance study can be conducted with an acceptable level of scientific precision, it could make an extremely valuable contribution to the Federal government's efforts to combat AIDS.

We are planning a number of activities and procedural changes in the information collection review area. First, the General Accounting Office (GAO) has completed an extensive audit of our information collection review process. Their final report will be issued later this summer, and it contains a number of important recommendations. We have formally responded to GAO and have informed them that we agree with and intend to implement most, if not all, of their recommendations.

Second, I am pleased to advise that substantial steps have been taken to make the database from the Federal Information Locator System (FILS), established pursuant to Section 3511 of the Act, available to the public. Congress believed that FILS, as the authoritative register of all approved information collections, needed to be available to the public. We are asking the Government Printing Office to offer an initial distribution of a FILS microfiche set to Depository Libraries across the country; we plan also to distribute the database through the National Technical Information Service. Once distribution has occurred, we will enter into discussions with the research community and others to investigate ways both to improve the database and the public's access to it.

Third, we will focus on greater use of computer technology as a means to reduce paperwork burden on businesses, especially small businesses. For example, OMB and the Customs Services are examining the potential of a computer-aided import entry system to substantially reduce the paperwork associated with importation of foreign goods. Such paperwork arises not only from Customs Service requirements, but also from requirements of the Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Treasury, and Transportation, as well as the Federal Communications Commission and the Environmental Protection Agency. This project will allow goods to move in and out of the country more quickly, and will reduce administrative costs and burdens to U.S. and foreign firms.

Because of the large number of overlapping data collections prescribed by these agencies, an electronic entry system has great potential for eliminating duplication. The system envisioned would permit information to be entered only once via electronic terminals and transmitted for inclusion in a single central system maintained by the Customs Service. The system would then generate reports needed by Customs and other agencies from the master record of each transaction.

The large number of forms involved -- about a hundred separate data collections -- will require a coordination effort spanning several years. OMB has taken the lead in this process by designating several programs for "fast track" development leading to a pilot system early in 1990.

Fourth, we will continue to seek ways to ensure the timely collection of needed information. Last month we approved a request from the U.S. Public Health Service for a test of an expedited review of multi-generational, genetic, and environmental research relating to addictive, mental and biomedical disorders that is sponsored by the National Institutes of Health and sister agencies. We believe that the Act provides us with the flexibility to grant rapid approvals to agencies to collect vital data of this sort, while still permitting us to fulfill our obligation to ensure that agencies do not impose undue burdens on, or infringe upon the privacy of, American citizens.

Finally, we will evaluate all of the methods we employ to involve the public in our deliberations on information collections imposed by the Federal government, and will take whatever actions are reasonable and necessary to enhance this process.

Public Participation and Public Protection

The 1986 amendments to the Paperwork Reduction Act strengthened substantially the ability of the public to participate in the information collection review process. The process begins when agencies justify their need for an information collection or recordkeeping requirement, and submit their proposals to OMB. The Act is designed to assure the public an early and meaningful opportunity to comment as part of the review process. For example, a Federal form may not be burdensome in itself, but, when combined with ten other forms, may be overwhelming for the public who must comply, or duplicative of information required by some other government agency. Public participation is key to a balancing of the government's information needs against the burdens placed on respondents -- the basis for the Paperwork Reduction Act.

Beyond participation, the Act contains a sanction for the public's protection. If an agency fails to participate in the Paperwork Reduction Act's review process, or fails to display a current control number on the applicable information collection, then, "[n]otwithstanding any other provision of law," the public is not subject "to any penalty for failing to maintain or provide information" (44 U.S.C. 3512). In 1986 Congress made the "Public Protection" provision fully effective and self-enforcing, by specifying that all information collection requirements, whether or not set forth in regulations, are treated the same under the Act.

On May 10, 1988, OMB published a final rule amending its paperwork clearance regulations in order to implement the 1986 amendments to the Paperwork Reduction Act. The rule encourages public participation in the paperwork review process in a number of ways. First, agencies must now describe in detail in a Federal Register notice the proposed form and its burden. At a minimum, this notice must contain a title for the collection information, a brief description of the need for the information and its proposed use, a description of the likely respondents and proposed frequency of response to the collection, and an estimate of the burden that will result from the collection. In addition, OMB encourages agencies to expand the level of detail provided in these notices to the public, and encourages the public to inform OMB of agency notices that appear inadequate to their underlying purpose. The purpose of these requirements is to ensure that the public that will have enough information about the proposal to be able to provide timely and meaningful comments.

Second, OMB's rule requires that agencies publish the actual information collection, the form and its instructions, in the Federal Register when they are requesting OMB approval in less than 60 days. This practice ensures that the public is able to obtain a copy of the proposed information collection in sufficient time to permit review and comment.

Third, OMB created a new section to its rule, Section 1320.21, "Agency disclosure of estimated burden." The new section requires agencies to indicate, on each collection of information, the estimated average burden hours per response, and to request that the public direct to the agency and to OMB any comments concerning the accuracy of this burden estimate and suggestions for reducing this burden.

This important new section is intended to help identify grossly under- or over-estimated burdens and thus improve the evaluation of the impact of an information collection and stimulate the analysis of alternative ways to collect the information. It will be several years before we will be able to determine how well these changes promote greater public involvement. For example, at this time fewer than 10 percent of Federal forms carry the new disclosure notice. As each existing information collection is reauthorized, and after existing stocks of forms are used up, the agency will reprint the form with the disclosure notice.

We and the agencies are seeking other ways of involving the public. OMB, for example, plans to hold more public hearings on proposed information collections, as authorized under Section 3508 of the statute. Such hearings, although infrequently held in the past, have proven to be of great value.

We are also requiring that agencies indicate in their paperwork clearance packages what steps they have taken to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

We are encouraging agencies to consider using automated collection techniques to increase practical utility and reduce burden.

To provide further guidance to the public, agencies, and OMB staff, OMB issued a publicly available "Information Collection Review Handbook" in January 1989. This comprehensive handbook describes agency and OMB responsibilities under the Act, the scope of the information collection review program, the information collection review process, the types of information collections that are and are not covered by the Act, the criteria for obtaining OMB approval, and public involvement in OMB reviews. The Handbook is intended to provide guidance to OIRA staff concerning their review responsibilities in order to ensure consistency in OIRA paperwork review practices, to provide guidance to agency staff in order to assure that they understand and can better comply with their responsibilities under the Act, and to help interested members of the public better understand how they can participate more effectively in the paperwork clearance process.

Agencies are also taking important actions to involve the public in decisions relating to information collections. For example, the IRS has developed an extensive program to test its tax forms on taxpayers before issuing them for general use. In 1988, 52 such tests were conducted. Earlier this year, the IRS became the first Federal agency to hold town meetings with the public in order to provide an open forum for public opinion on tax form and publication matters. Ten such meetings were held across the country, and although comments have yet to be fully analyzed, IRS has already taken action to correct problems mentioned frequently at these meetings.

## Statistical Policy and Coordination

OMB provides overall leadership to the decentralized Federal statistical system. Perhaps our most important function is to work with the statistical agencies to ensure the integrity and reliability of our Federal statistical system. OMB's statistical policy functions under the Paperwork Reduction Act include long-range planning to improve Federal statistical programs; coordination of statistical activities through budget review and other means; development of principles, policies, standards, and guidelines for the conduct of the government's statistical work; and evaluation of statistical programs and agency performance.

In 1987 we completed revision of the Standard Industrial Classification, the first major revision since 1972. We have organized the Federal Committee on metropolitan Statistical Areas to review criteria for the redefinition of MSAs following the 1990 Census. A Federal Register notice was published to solicit public comment on the proposed criteria. OMB chaired the Task

Force on Household Survey Redesign to plan a coordinated redesign of the major household surveys to ensure timely release of quality data following the 1990 census. We have worked with statistical agencies and the Council of Economic Advisors to develop a program to improve the quality of economic statistics. We published 15 Statistical Policy Working Papers that provide guidance to agencies on methodological problems.

Let me turn to some specific future plans that we have. Among these are: improving the quality of Federal statistics by issuing government-wide standards of professional practice for planning, collecting, analyzing, and documenting Federal statistics; and developing and implementing long-range plans to improve the accuracy, relevance, and timeliness of economic statistics. We will develop the criteria to be used in the 1990's and apply them to define Metropolitan Statistical Areas. We will improve the accuracy and comparability of economic data by designating central collection agencies to maintain uniform farm and non-farm business lists.

Privacy

The privacy functions of the Director under the Act cover not only OMB's historical statutory responsibility for overseeing the Privacy Act of 1974, but also include developing and issuing policy and guidance related to "information disclosure and confidentiality" as well as information security. The Act reiterates OMB's Privacy Act oversight responsibilities and adds a requirement for monitoring agency compliance with "related information management laws." As a part of this oversight, OMB staff oversee the agencies' implementing activities by reviewing requests for information collections that involve individually identifiable data, and by reviewing reports of new systems of records and matching programs for conformity with the provisions of the Act.

In discharging its responsibilities under this section, OMB has been especially concerned to address issues related to automation and information. In 1986, OMB thought that it was essential to iron out problems associated with "call-detail" records (called and calling numbers and length of call) well in advance of the establishment of a new government-wide telephone system, FTS 2000. OMB worked closely with the General Services Administration to develop guidance to help agencies deal with the creation, storage and use of these records, which are developed to support agency long distance telephone cost control programs. This guidance sensitized agencies to their general records management and Privacy Act responsibilities related to these records. In December 1988, the General Accounting Office issued a study on this question, entitled "Telecommunications Privacy: GSA's Planned FTS 2000 Telephone Record Controls Appear Reasonable." GAO recommended that OMB work with GSA and the

Department of Justice to explore whether administrative or legislative approaches were needed to ensure that call detail records are adequately protected from inappropriate disclosure. We agree with this recommendation and have asked GSA and Justice to assist us in that review.

## Freedom of Information Act

In 1987, amendments to the Freedom of Information Act (FOIA) brought a new responsibility to OIRA: that of developing uniform fees and guidance for agencies to use in charging requesters for FOIA services. OIRA's guidance, issued the same year, established for the first time a consistent government-wide procedure for determining FOIA fees. It ensured that agencies would not use fees as barriers to prevent citizens from gaining access to the records of the government.

The procedures established by our information confidentiality statutes such as the Privacy Act and the Freedom of Information Act were developed in an era when paper records were the norm. Both Acts are beginning to show their age; neither is completely effective in dealing with our present electronic records age. There are administrative steps we can take to improve the operation of these Acts. And we intend in the year ahead to revisit the guidance we have issued and improve its applicability in so far as we can. But we cannot stray from the plain wording of the statutes themselves. Eventually it may be necessary to revise and modernize these statutes. That will likely be a complicated and probably contentious process since there are many legitimate stakeholders. We would like to offer the Congress our help in this important effort.

## Computer Matching

In 1987 and 1988, OMB worked closely with the Congress to develop legislation on the use of computers to compare records about individuals. This process, called computer matching, is an essential element in the government's fight against fraud, waste and abuse in Federal programs, particularly benefits programs. In 1979, OMB issued guidance on conducting computer matching and the requirements of the Privacy Act. This guidance was updated and reissued in 1982. The 1988 legislation effectively wrote the OMB guidance into law and added certain oversight and due process provisions as well. The resulting Computer Matching and Privacy Protection Act of 1988 will ensure that necessary matching continues to take place while at the same time providing that matching programs incorporate due regard for the privacy rights of individuals. OMB is currently working on guidance as required by the statute to explain the Act's provisions to the affected parties.

Computer Security

During consideration of the Act's 1986 reauthorization, OMB indicated that it would work with the Congress to craft an acceptable computer security bill. Those efforts culminated in the Computer Security Act of 1987. The purpose of the Computer Security Act is to improve the security and privacy of sensitive information in Federal computer systems and to create a means for establishing minimum acceptable security practices for such systems.

In July 1988 OMB issued guidance for preparation and submission of security plans for Federal computer systems containing sensitive information to assist agencies in preparing and submitting plans to the National Institute of Standards and Technology (NIST) and the National Security Agency (NSA). Since January 1989, we have been working with the joint NIST/NSA team that has been reviewing the more than 1500 plans submitted by the Departments and agencies.

The Computer Security Act recognizes the need to integrate computer security into systems planning and mandates that summaries of computer security plans be included in an agency's annual five-year plan required by the Paperwork Reduction Act. The Act also recognizes that security awareness is as important as security planning. Under the Act, agencies are required to provide mandatory periodic training in computer security awareness and accepted computer security practice for all employees involved in the management, use or operation of Federal computer systems handle sensitive information. OMB has worked with NIST to develop guidelines for such training and with the Office of Personnel Management which issued regulations governing the training.

At the same time, we will continue our efforts to improve the security of Federal computer systems. In the short term, we will be completing review of the first round of security plans, and issuing guidance both for follow-on planning efforts and to better integrate computer security planning into basic decisions about information technology systems. That should assure that security planning decisions are integral to basic decisions about information technology systems. Over the longer term, we will work with NIST to assure that agencies are aware of the security risks implicit in their computer systems and are provided the tools they need to secure those systems. Along that line, the Administration has proposed substantial funding increases for NIST's computer security program in FY 1990.

## Federal Automatic Data Processing and Telecommunications

The Paperwork Reduction Act directs OMB to improve the acquisition and use of automatic data processing, telecommunications and other information technologies. Key among our responsibilities is providing "advice and guidance; through the review of budget proposals and other methods, on agency proposals for major information systems". To provide this guidance, OMB has established a program of Presidential Priority Systems reviews to focus top management attention on high priority projects. Since 1984, the program has reviewed 21 of the most complex, sensitive and precedent-setting information technology projects in the government. The Federal Aviation Administration's Advanced Airspace System and nine other projects make up this year's Presidential Priority Systems. These projects involve investments of $1.4 billion in the 1990 budget, and a system life cost of $13 billion. In the past two years these reviews have assisted in establishing the scope and requirements for the FTS 2000 project; in redefining the project scope and schedule for the Tax System Redesign; and in determining the steps needed to get the Patent and Trademark Office automation project back on track.

To discharge our responsibility to review information technology budget proposals, we have required agencies to perform a benefit/cost analysis of information technology projects contained in the budget. Budget submissions now contain additional analysis of alternatives and technical feasibility for information technology initiatives. In the FY 1990 budget process OMB reviewed about 50 information technology projects, providing suggestions for improvements and for consolidations across agencies.

Because of their strategic importance to the development of major information systems, and as directed by the Act, OMB has been active in the development and implementation of standards for computer and telecommunications equipment, software, and operations. We review proposed Federal Information Processing Standards for consistency and technical responsiveness before they are issued by the Secretary of Commerce. This year, landmark standards for data communications in the form of the Government Open System Interconnection Profile and for portable software in the form of the Portable Operating System Interface for Computer Environments were issued. Our activities have confirmed the merits of DOD's proposal to create a better mechanism to coordinate the work of Federal agencies with responsibilities for computer and communications standards. Two coordinating committees, one chaired by OMB and the other by NIST, have begun work to harmonize these activities and to identify priorities for standards development.

Since 1983, OMB in coordination with GSA and the Department of Commerce, has annually published a "Governmentwide Five-Year Plan for ADP and Telecommunications" as required by the Paperwork Reduction Act. That plan serves three important purposes: (1) it provides central oversight agencies and the public with advance information on agency strategies; (2) it articulates governmentwide trends and directions -- in past years it has highlighted issues like open systems interconnection, while this year we will address electronic data interchange and data communications; and (3) it gives those who provide information technology products and services information about opportunities in order to enhance competition.

OMB is also supporting GSA's efforts to strengthen its procurement management reviews to focus on critical high-risk systems. In addition, we believe that a strategy for implementing the triennial review function in the Act -- agency self-evaluation -- has had a positive effect on agency management of information resources. As GAO noted in its testimony on June 12th before this Subcommittee, management of information resources is ultimately an agency responsibility. We agree wholeheartedly and see our job as helping the agencies to succeed.

Finally, OMB is to provide policy direction to GSA and to monitor the effectiveness of the directives GSA issues under the Brooks Act. Recently we assisted GSA in improving the efficiency of its ADP equipment reutilization program. We also have been working closely with GSA to implement through regulations recently enacted statutory provisions, including the revised definition of ADP equipment under the Brooks Act, and the requirement that agencies use FTS 2000 to meet their long distance telecommunications requirements.

Our work has allowed us to identify several successful management practices for implementing large systems: cost-benefit analysis as a decision making tool; reliance on off-the-shelf software; and application of international standards. We have incorporated these lessons into policy guidance to encourage these practices government-wide. Our experience with these reviews has also allowed us to identify failings common across projects.

We have concluded that inadequate technical management is one of the biggest reasons why these initiatives fail or founder. Often, agency policy officials responsible for managing these projects do not have independent and objective sources of advice on their available options or on the technical viability of staff proposals. We believe senior program officials need access to impartial technical management expertise to help them define the scope of projects, explore acquisition strategies, monitor contractor and government employee performance, evaluate hardware and software development activities, and evaluate progress after contracts are awarded.

In recognition of this need, we are considering the creation of a center for information technology management. The purpose of this center would be to provide the expertise I have just described through one of the following vehicles: using an existing commercial source; establishing a center as part of a Federal agency; or establishing a private, not-for-profit entity as a Federally Funded Research and Development Center.

The creation of this type of capability could go a long way toward improving the success of many of our major information systems projects. In May we published notices in the Federal Register and the Commerce Business Daily soliciting public comments on alternative means of establishing such a center. We have received a few comments to date, many of them initial expressions of support. The comment period does not close until next week, and we expect to extend it in order to ensure we receive the widest possible range of views.

## Conclusion

The Paperwork Reduction Act constitutes an ambitious attempt to manage the government's collection and use of information. Building on the Federal Reports Act of 1942, the Federal Records Act, the Brooks Act, the Privacy Act, and related laws, it requires that OMB, working with the agencies, examine and improve the management of Federal information activities. The unifying theme of the Act is that information is a scarce economic good which, like all goods, has costs of production as well as benefits of use.

We and the agencies have long attempted to improve Federal management of information resources. We are proud of our successes. We are well aware that more can be done.

The Act provides us the necessary authorities to carry out the functions covered by the Act. We believe we have implemented the Act in a sound and responsible way. And we and the agencies are moving to improve upon that record.

We have heard from many interested groups as to what we should or should not do. Last Monday this Subcommittee heard from three distinguished panels on Paperwork Reduction Act issues, and today I am followed by two more. You and your staff have put in a great deal of effort in recent months listening to the views of a wide range of interested parties, and we appreciate that effort. As we continue to implement the Act and move toward its reauthorization, we look forward to continuing to listen and be responsive to you, to your colleagues in the other body, to the views of other Federal agencies, and to interested members of the public. Thank you for the opportunity to come before you and testify. If you have any questions or comments, I would be happy to respond.

### June 16, 1989 Hearing Follow-up Questions for
### S. Jay Plager, Administrator
### Office of Information and Regulatory Affairs

1. **Please provide us with an organizational chart of OIRA which diagrams the functions, number of employees (including vacancies with period of vacancy), and budget for each function.**

A current OIRA organizational chart is attached at Exhibit 1. Our current on-board strength including support staff (secretaries, research and management assistants) is 57. The vacancies shown on the chart have been open as follows:

| Branch | Vacant since |
|---|---|
| Natural Resources | July, 1988 |
| Information Technology Management | October, 1988 |
| Commerce & Lands | February, 1989 |
| Human Resources & Housing | March, 1989 |

We also have two support staff vacancies. OIRA personnel ceilings have fluctuated over the years. From a high of 80 in 1984, our ceiling dropped to 75 for 1985-86 and to 69 for 1987-88. The vacancies shown reflect OIRA's 1989 ceiling of 62 FTEs.

OMB does not budget OIRA's resources according to functional areas within OIRA. OIRA's 1989 estimated budget is $5.05 million.

2. **If OIRA were to experience a reduction in budget, which functions do you believe should be given the greatest consideration for priority funding?**

Answer: The bulk of OIRA's funding is used for salaries and related overhead.

OIRA is specifically responsible under the Paperwork Reduction Act for: (1) reviewing, approving, and disapproving collections of information imposed on the public; (2) providing principles, guidelines, and guidance concerning the acquisition, use, and management of Federal information resources (including computers and telecommunications); and (3) coordinating and giving policy direction in Federal statistical activities. OIRA is also assigned responsibilities under the Budget and Accounting Procedures Act of 1950, as amended (statistical policy, 31 USC 1104(d)), the Brooks Act (P.L. 89-306, as amended), and the Privacy Act of 1974 (5 USC 552a). In addition, OIRA carries out as a part of OMB regulatory review and oversight activities assigned by Executive Order No. 12291 (Federal Regulation, February 17, 1981) and Executive Order No. 12498

(Regulatory Planning Process, January 4, 1985), as well as Executive Order No. 12046 (Telecommunications Policy, March 17, 1978).

To a large extent, all of these differing, yet interrelated and interdependent functions are specialized aspects of a more fundamental responsibility of every component of OMB -- Presidential oversight of agency programs, both those programs in existence and those under development. Which agency programs OIRA oversees at any given time, and those to which OIRA gives the greatest consideration, depend on a wide variety of factors -- some within OIRA's ability to control, many not. For example, the need of statistical agencies to develop and disseminate better quality data involving the kind, amount, and productivity of American and foreign service industries is caused by the underlying changes in industrial and economic activity in the United States, not by some priority choice in OIRA. Agencies, not OIRA, generally determine which draft information collections and draft regulations to submit for OIRA review. And agency program needs, not OIRA's, generally determine which automated data systems need to be created, or substantially upgraded.

Should budget reductions occur, it is likely that the consequences would be seen more as longer time for decisions to be made, and eventual reductions in quality of performance, rather than an outright failure to perform an assigned function.

3. **Where in OIRA does the greatest need exist for additional resources?**

Answer: As the answer provided in response to Question 1 indicates, OIRA now has four vacancies for professional analysts and two vacancies for secretaries. Filling these positions will permit OIRA staff to better perform existing functions and carry existing workload under responsible professional conditions. That is OIRA's greatest need. Additional resources would allow us to increase our efforts in statistical policy, information policy, and information technology management. In addition, OIRA needs to improve its own automated data systems, and the Federal Information Locator System. Any hiring by OIRA and other allocation of resources to OIRA, however, depends on the needs and priorities of OMB as an institution.

4. **At the hearing you said there was support in the administration for a permanent authorization of OIRA. Can you tell me what the official position of the Administration is on the length of time for the reauthorization of OIRA?**

   Answer: On April 3, 1989, Director Darman transmitted to Congress proposed legislation that would authorize appropriations for OIRA for FY 1990, 1991, and 1992.

5. **What is your view of the benefit of legislating specific job qualifications for the Administrator of OIRA?**

   Answer: On January 11, 1989, Richard Darman, as OMB Director-Designate, was asked the kinds of qualifications he believed the OIRA Administrator should have. He responded:

   "The primary qualifications for the Administrator of the Office of Information and Regulatory Affairs are similar to those I would expect for any senior manager in OMB -- respect for and understanding of the role of the President and the Executive Office in which he or she will serve, education and experience in areas pertinent to the responsibilities he or she will have, the ability and practice of working hard for long hours, the ability to cope with the requirements to balance competing claims, and an understanding of how to manage and work effectively with people."

   There is, in my view, little benefit to legislating the job qualifications for the OIRA Administrator, and considerable risk of harm. It is unlikely that legislation would list the kinds of general qualifications described by Director Darman. Instead, "job qualifications" would presumably refer to technical professional training or experience. The job of an OIRA Administrator is not that of a technician, however.

   The OIRA Administrator spends much of his or her time meeting with others within the Executive Office, with agency managers, with Members of Congress, and with the public. Much of the rest of his or her time is spent reading, editing, and writing. A rigorous professional education may assist in preparing the OIRA Administrator in handling his or her workload, especially one that emphasized language skills, logical thinking, analytical ability, and a thorough understanding of government and philosophy. Yet, the wide-ranging nature of the issues that come before the OIRA Administrator, and the wide variety of individuals with which the Administrator must relate, suggest that any number of different kinds of educational and professional backgrounds may serve this purpose. Limiting the field of possible candidates for OIRA Administrator to one or another specific academic or scientific specialty will simply make it harder to find an individual who will also have the communication and "people" skills necessary for effective performance.

6. **Are agencies building the capabilities to carry out their information resource management responsibilities in an effective, efficient and economical manner? What is the status of the three year report to Congress from OMB reviewing agency IRM activities?**

Since enactment of the Paperwork Reduction Act, we have seen a steady, if at times uneven, improvement in agencies' capabilities to perform information resources management. This improvement can be measured in several ways. A number of important ADP initiatives, including the FAA's Advanced Automation System, GSA's FTS 2000, and the Patent and Trademark Office Modernization, are now successful efforts that clearly promise improved information resources management in critical areas. The government's investment in information technology, which continues to grow as a share of the operating budget, is another measure of our commitment to ensuring effective and efficient operations. Finally, agencies have made important improvements in planning for and managing ADP acquisitions. These latter improvements are documented in part in the three year report to Congress, which we expect to be able to forward to Congress in August.

7. **In your prepared testimony you stated that statistical policy is among the most important of OIRA's functions. Isn't that claim inconsistent with the limited statistical policy office and the use of this staff for activity other than statistical policy projects?**

Answer: The statistical policy staff is dedicated almost exclusively to statistical policy projects. Included in these projects are review of statistical information collections, coordination of statistical programs, and review of statistical agency budget requests. In addition, desk officers in other branches of OIRA identify statistical issues for referral to statistical policy staff, and deal directly with routine statistical questions. Though it is true that the statistical policy staff is limited in number, statistical policy issues are worked on by more than just this branch's staff. Given our overall OIRA resource constraints and the particular difficulties in attracting qualified statisticians to the Federal government, we have had to make do with very limited resources here. In the last year I have given considerably more attention to this area than it was getting, and we are trying to augment the resources available for this purpose.

8. **Since the information collection of the major statistical agencies comprises only a small portion of the paperwork burden on the public, what is your view of the idea to create a distinction between these collections and those in the paperwork review process? Are there different criteria already in place for assessing information collection requests for statistical data and administrative data?**

Answer: We already observe distinctions between the criteria for reviewing some types of statistical data collections and those that support program administration. Specifically, many statistical data collections are for general purpose statistics, those that are collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information. For these general purpose statistics, the standard of "practical utility" is defined differently (see 5 CFR 1320.7(o)) than it is for other collections of information.

9. **The recently issued revisions to the policy developments of Circular A-130 are a welcome change. If an agency proposed a new automated dissemination service today, what standards would you use? Which principles from the existing A-130 will continue to apply? Which will be discarded? Please be specific. When will a new A-130 be promulgated?**

OMB plans to promptly analyze public comments to its notice of June 15, 1989. Following this analysis, OMB will review the pertinent portions of OMB Circular No. A-130, namely Section 7, Basic Considerations and Assumptions, Section 8 (a), Information Management, and corresponding sections of Appendix IV. OMB will include in the review its notice of August 7, 1987, concerning electronic collection of information, and its notice of January 4, 1987, concerning electronic dissemination of information. The goal is to arrive at a new formulation of policy for information collection and dissemination that includes electronic collection and dissemination and incorporates the principles set forth in the June 15 notice, taking into account the public comment. Since the public comment period is still open and the review process is just beginning, it is premature to prejudge which principles will continue to apply and which will be discarded. OMB hopes to publish a notice for comment containing the results of these review and reformulation processes by the end of 1989.

If an agency were to propose a new automated dissemination service today, we would expect the agency to abide by OMB Circular No. A-130. At the same time, we would encourage the agency to consult with OMB concerning new developments and the tailoring of policy principles to the agency's particular mission and circumstances.

10. **In your testimony you stress the importance of the Federal Information Locator System. Are there major examples of where the FILS has been used by OMB to identify and stop overlapping or duplicative information collection?**

Most duplicative information collections have been identified by members of the public, agency personnel, or OMB desk officers. A search of FILS has seldom identified a duplicative information collection to OMB. Some agencies report that FILS occasionally has been useful in identifying duplications before requests for approval are made to OMB.

OMB's testimony regarding the value of FILS stressed the steps being taken to make the FILS database accessible to the public. Once the database is available, we will begin discussions with the research community and others concerning ways to improve the database and the public's access to it.

11. **Do you envision FILS ever serving as an index to Federal information resources, especially electronic databases? Should we replace FILS with a program which performs that specific indexing function? What other suggestions can you make for creating or coordinating a public (and government) index to Federal information resources?**

As part of its revision to OMB Circulars No. A-130 and A-3 (Government Publications), OMB will propose requiring agencies to maintain in electronic format detailed current inventories of their information products available to the public. This will include electronic databases. OMB has required such an inventory under OMB Bulletins 87-14 and 88-10. However, the information contained in the present inventory is of limited use, and this was one reason we stated in our June 15 notice that OMB intends to establish an appropriate interagency group to determine the content of the inventory. We view this group as a vehicle for exploring the overall utility of an inventory, as well as how the inventory should be institutionalized and what should be its contents.

12. **Can you describe for us how the decision to use microfiche as the format for FILS dissemination to the Depository Libraries was made.**

OMB plans to make the present FILS database available for public use in several formats. As a first step, the database will be released in microfiche to the depository library program and in magnetic tape format to the National Technical Information Service. As a second step, OMB is exploring the possibility of including the FILS database in a CD-ROM being jointly developed by several agencies under the sponsorship of the U.S. Geological Survey; this product is commonly known as "FED-ROM." In formulating its plans, OMB asked what formats could be released first and most conveniently; providing microfiche to the depository libraries appeared to be a convenient, inexpensive way to make the database widely available through the depository libraries.

13. **Would you agree that the high approval ratio in the information collection area does not reflect the significant revisions that are made within the course of a desk officer's review? Would you be willing to recommend that OIRA staff log all agency submissions, rather than just the disapproval of submissions, and to record changes made during the approval, as well as the disapproval process?**

Answer: Under the Paperwork Reduction Act of 1980 and the predecessor Federal Reports Act of 1942, what is now the Office of Information and Regulatory Affairs (OIRA) has approved or disapproved an agency's request for clearance of each draft collection of information for more than 46 years. To keep track of what is now more than 3,000 clearance requests a year, OIRA's predecessor established a computerized tracking system that listed each clearance request, and the decision made. Based on what is admittedly a relatively rudimentary computerized records system, OIRA is able, for example, to count the number of clearance actions OIRA makes each year -- approval and disapproval of paperwork clearance requests. This computerized tracking system was not intended to provide a detailed description of the agency submissions or of any changes that might be made to them in the course of OIRA staff review. However, we are considering various proposals for the inclusion of additional information in the tracking system.

In addition to the computerized tracking system, we maintain an individual clearance docket for each information collection reviewed. The clearance docket provides (and must -- under the Administrative Procedure Act -- legally provide) a complete record of what the agency submits, and any changes that the agency decides to make in the course of review. In addition, 5 U.S.C. 3507(h) requires OIRA to include in the docket file "any written communication" from or to any person not in the Federal government or in any Federal agency regarding any proposed information collection. Moreover, to assure that the public has full access to the clearance docket, OIRA's clearance rules specifically provide:

"In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours" (5 CFR 1320.19(a)).

**14. Does OIRA document oral communications with Executive Branch agencies and representatives of nongovernmental organizations?**

**Answer:**

(a) Oral communication between OIRA and other Executive branch agencies:

OIRA staff does not document oral communications with Executive branch agencies concerning information collection requests under Paperwork Reduction Act review, or rules under Executive Order No. 12291 review. The process of review may involve anywhere from a few to literally hundreds of interactions in any given case. As a practical matter, an attempt at documentation would be a bureaucratic nightmare, creating a blizzard of paper with no apparent use, and would divert substantial resources away from accomplishing expeditious reviews. Further, as a policy matter such documentation would impede the communication of policy views within the Executive branch necessary to the deliberative process itself.

(b) Oral communications with representatives of nongovernmental organizations:

The OIRA policy regarding oral communications with representatives of nongovernmental organizations regarding Executive Order No. 12291 reviews is described in a June 13, 1986, Memorandum for the Heads of Departments and Agencies from former OIRA Administrator Wendy Gramm. (Reprinted as Appendix III of the 1988 Regulatory Program of the United States Government). These procedures state: "Only the Administrator and Deputy Administrator within OIRA (or someone specifically designated by them) may communicate with someone who is not employed by the Federal government on regulations submitted to OIRA for review under Executive Order No. 12291."

In addition, in accordance with these procedures, OIRA has agreed with five agencies (the Departments of Housing and Urban Development, Labor, Transportation, and Treasury, and the Environmental Protection Agency) to certain additional disclosure procedures involving oral communications. Specifically, OIRA will advise these agencies of all oral communications, e.g., meetings or telephone calls, concerning the substance of the agency's rules under review that the OIRA Administrator and Deputy Administrator have with persons who are not employees of the Federal government; and will invite agency representatives to all scheduled meetings with such persons concerning that agency's rules. Furthermore, OIRA keeps a publicly available list of all such meetings and other such oral communications with persons outside the Federal government. OIRA is in the process of determining whether other agencies object to extending these additional disclosure procedures to them.

Regarding Paperwork Reduction Act reviews, OIRA does not routinely document oral communications with persons outside the Federal government. As noted in the answer to question 13, the clearance docket must contain a complete record of all written transmittals between the agency and OIRA, and that record constitutes the legal basis for decisions by OIRA under the Act. Oral communications in this area have not been [illegible] matter of concern.

15. **During your confirmation hearing in 1988, you stated that the Tax Simplification Act would actually complicate filing for the public. What role did OIRA play in the effort to simplify the tax forms as intended by the new tax law?**

OIRA has worked closely with the Internal Revenue Service (IRS) to reduce the burden of tax forms and to support activities that encourage significant reductions overall.

In our Paperwork Act review of individual paperwork requirements, for example, we have worked with IRS to ensure that taxpayers are not required to read any more instructions or complete any more items than is absolutely necessary. For example, the first version of the form for calculation of the interest on home mortgages qualifying for tax deduction required an unnecessarily large number of homeowners to go through a detailed listing of the loans on their property. We worked with the IRS to eliminate the listing for a large proportion of homeowners, thus reducing the aggregate burden on homeowners by 80 percent, or 13 million burden hours. IRS also is examining many small improvements in individual questions that make the returns more user-friendly.

Over an extended period we have also discussed with IRS ways to reduce the burden of reporting on small business by creating simplified forms for them. Recently IRS developed an EZ form for the employers annual federal unemployment tax return which will result in a net savings of 33 million hours for small businesses. A substantial number of small tax exempt organizations will be able to complete a simplified EZ information return beginning with the 1989 tax year, freeing many small charitable organizations from the necessity of hiring the services of professional tax preparers.

Regarding overall planning, we have continued a dialogue with IRS to examine alternatives for burden reduction. These have included more vigorous introduction of electronic filing study of ways in which IRS could significantly increase the number of tax returns it completes in response to requests from individuals, and a feasibility study of the introduction of biennial tax filing during the next decade.

As an example of improvements in this area, IRS is exploring ways to increase the electronic filing of tax returns by tax preparers, thereby enabling participating taxpayers to obtain their refunds more rapidly.

**Are you still of the opinion the Act does not work?**

The question is not whether the Act "works," but what can be done to reduce or eliminate the paperwork burdens created by the Act. The burden imposed by the Act is composed of several factors, each of which should be looked at separately. First, transition to the changes required by the Tax Act required a number of one-time filings. All filers of individual tax returns were required to file a revised W-4, many homeowners were required to report in detail on their mortgage loans, investors were required to master the details of identifying and reporting on passive activities, and all taxpayers were thrown into a learning mode. The burden now is measurably less than it was during the first transition year. Several million persons who were taxpayers before the 86 Act now file no returns, and that is a clear gain. The home mortgage interest provisions also require virtually no reporting now that the tax code has been further modified. However, some areas remain particularly burdensome, such as the calculation of the passive activity loss, nondiscrimination in employee benefits and calculation of income from tips. We are continuing to look for ways to simplify reporting requirements in these cases.

**What steps would you recommend to make the tax form simplification goals a reality?**

First, we recommend strong support for the efforts already underway at IRS to review all major forms in order to provide straight-forward guidance to the majority of taxpayers who do not have complicated tax situations. Second, it would help to have more stability in the tax code, with changes to the code introduced only when clearly necessary. Third, modernization of IRS' information technology and telecommunications should be pursued vigorously so that taxpayer services can continue to be upgraded. Modernization of its data systems will facilitate electronic filing and calculation of taxes by IRS and result in some further burden reduction on filers. In addition, modernization would make it possible for IRS to provide improved responses to taxpayers when something in a return is unclear or incorrect. This will tend to reduce the burden of preparing amended returns and will contribute to improved future returns.

16. **OMB's authority to delegate its review of information collection requests to agencies had been delegated just once, to the Federal Reserve Board. Does OIRA have a general policy to either encourage or discourage delegation of this authority? What is the incidence of requests for delegation and what criteria is used to approve or disapprove? Are there guidelines to the agencies on making such requests?**

We are anxious to delegate primary review to qualified agencies and will take further steps in this direction. The procedures for requesting approval authority and the criteria that OMB uses to determine if delegation would be consistent with the Act are prescribed in the implementing regulations at 5 CFR 1320.9. In the past we have received requests for delegation from the Department of Health and Human Services and Department of Veterans Affairs. We informed both agencies of our interest in delegating, once the agencies modified their procedures to conform to the criteria set forth in the regulations. No further action on delegation to these two agencies has occurred yet. We are currently considering a request for delegation related to the Tennessee Valley Authority.

17. **Your prepared testimony states that information collection request reviews include identifying those which may be of only "marginal utility." What is the criteria for determining "marginal utility," i.e., marginal to whom, and who at OIRA makes this determination?**

Answer: Our testimony stated:

> "Each year OMB reviews between 3,000 and 4,000 individual agency information collection requests to determine whether they meet the statutory criteria: (1) are they necessary for the proper performance of the agency's function? (2) will they have practical utility for the agency? (3) do they avoid duplicating existing information collections? (4) do they not unduly burden the public? Through this process, OMB can identify and prevent information collection

> activities that are of marginal use, duplicate existing collections, or may be accomplished by using less burdensome methods. When problems appear to exist, OMB meets with the sponsoring agency to encourage modifications to the planned data collection activities that will improve the collection.

The question asks about OIRA's actions with respect to information collections that are of a marginal use. OIRA was referring, informally, to the statutory requirement that agency information collections are to have "practical utility" -- which the Paperwork Reduction Act defines as "the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion" (44 U.S.C. 3508, 44 U.S.C. 3502(16)).

OIRA's paperwork clearance regulation defines "practical utility" in greater detail:

> "'Practical utility' means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have 'practical utility,' OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have in interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, 'practical utility' means that actual uses can be demonstrated" (5 CFR 1320.7(o)).

The agency has the obligation to demonstrate that "the collection of information has practical utility" (5 CFR 1320.4(b)(3)). The agency sets out its case for practical utility of the proposed collection in the clearance package submitted for OIRA's review and public scrutiny. The decision whether the agency has met its burden under the statute and governing regulations is ultimately the responsibility of the Administrator of OIRA, under the direction of the Director of OMB.

18. **In your statement, you mention that inadequate technical management is the major problem with respect to the creation of new government information systems and propose the creation of a center for information technology management. Under the Paperwork Reduction Act, OMB already has the responsibility of "providing advice and guidance on the acquisition and use of automatic data processing and telecommunications equipment." How is the center different from or a complement to the existing OMB functions and current ADP procurement functions of GSA.**

A center for information technology management would complement existing OMB and GSA activities. The center for information technology management, as we envision it, would not provide systems design or programming services, a function we see continuing to be performed by a combination of Federal employees and contractors. Rather, the center would help senior management to develop strategies and evaluate existing projects. Given their general oversight roles, neither OMB nor GSA is the appropriate organization to provide such continuing assistance to agencies. While from time to time OMB or GSA may be involved, we envision the staff of the center establishing a continuing relationship with agency management. In addition, GSA, through its contracting activities, provides agencies with access to systems analysis and programming services from the private, for-profit sector. We would expect that process to continue.

A copy of a paper elaborating on the concept it is attached for your information at Exhibit 2.

19. **At an earlier hearing before the Subcommittee, Mr. John Diebold suggested that procurement is an important tool in advancing information technology. What role do you see for government procurement in advancing the state-of-the-art? priority systems?**

Although the government is no longer the dominant presence in the information technology market that it was in the early days of computing, it remains an important influence in several ways. As Mr. Diebold suggested, procurement policy is one "instrument of policy" the government may use, along with legislation, R&D funding, and tax policy. To this list we would add technical standards, general information policy, antitrust policy, and import/export policy.

20. **In reviewing information technology systems, does OIRA take into account the effect of the system on improving the state-of-the-art? If so, what criteria are used?**

As a general rule, OIRA has not placed a great deal of emphasis in its review of information technology systems on determining a system's effect on improving the state-of-the-art. In fact, we have taken a rather conservative approach in this area for most systems. Our experience with most Federal agencies has convinced us that, unless a unique Federal requirement exists that cannot be met by using or modifying existing technology, the government is better off using the most up-to-date, commercially available, off-the-shelf technology. Most agencies have neither the technical nor the financial resources to sponsor and to responsibly oversee the development of leading edge applications.

We do not apply this general approach blindly, however. Some projects do require the government to push technology or the industry. The FAA's Advanced Automation System carries unique requirements for reliability, communications, processing speed, and visual display. GSA's FTS 2000 is requiring various elements of the telecommunications industry to cooperate in new ways, and is setting the standard for connection between local and long distance advanced communications facilities. The Patent and Trademark Office Modernization is leading U.S. efforts to develop optical imaging systems.

In our review of these unique priority systems we apply three review criteria which amplify some of the criteria we use for less unique systems. First, we ask whether the agency's plan includes adequate development and testing time to ensure success. Second, we ask whether the agency has in place a management structure that is up to the task. And third, we ask whether the agency's approach builds, in a realistic way, on the existing capabilities available in industry today. These criteria reflect our fundamental view that, where the government is a technology leader, it has a particularly important responsibility to ensure the success of the systems it buys.

21. **In the hearing you stated that OIRA functions essentially would continue if Congress failed to reauthorize. Could you comment on that statement in light of our interpretation of section 3520(b) of the Paperwork Reduction Act which seems to deny OMB the ability to absorb the OIRA functions if reauthorization does not occur by September 30, 1989.**

The issue of what might or should happen if Congress fails to reauthorize appropriations for the Office of Information and Regulatory Affairs (OIRA) by September 30, 1989 is far from clear, both as a matter of law and sound government policy.

First of all, regardless of whether funding for OIRA is either authorized or appropriated, Sections 3501 to 3519 of the Paperwork Reduction Act would presumably remain in effect, and both the Director of OMB and the agencies would continue to be bound by these provisions. As Section 3503(b) states:

> "The Director [of OMB] shall delegate to the Administrator [of OIRA] the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions." (Emphases added.)

In other words, if OIRA had neither appropriations nor an authorization, the OMB Director and the agencies would still be obligated to carry out their responsibilities under the Act. For example, the OMB Director would continue to have his legal responsibilities under the varying provisions of Section 3504 involving information clearance, statistical policy and coordination, records management, and automatic data processing (including telecommunications); agencies would still have their general compliance responsibilities under Section 3506; agencies would still be prohibited from seeking to conduct or sponsor the collection of information without OMB approval under Section 3507; the OMB Director would still be obligated to implement the Federal Information Locator System under Section 3511; agencies would be prohibited from enforcing unapproved information collections under Section 3512; the OMB Director would continue to have his responsibility to oversee agency information management activities under Section 3513; the OMB Director would continue to have to provide the reports to Congress concerning his implementation of the Paperwork Reduction Act required every year under Section 3514; and the OMB Director would still have to provide information to the Comptroller General as required by Section 3519.

Secondly, the prohibitions stated in Section 3520(b) are limitations on the appropriations process. As a general matter, if Congress later decides (as it has often done, for many different agencies for which an authorization has expired) to appropriate funds for an agency, and the appropriation becomes statutory law, then that appropriation acts as both the authorization and the appropriation.

We seek a timely reauthorization of appropriations for OIRA. Failure by OIRA to obtain an authorization would certainly be disorderly. The Paperwork Reduction Act, however, is built on an interdependent set of responsibilities -- shared by OMB, OIRA, the agencies, and the public.

22. **Another panel at the hearing discussed the paperwork burden on business, particularly small business, and seemed to take issue with the claimed 5.7 percent reduction in paperwork that was achieved in fiscal year 89. Can you summarize how this figure was arrived at, how much confidence you have in the claim and why there is so much skepticism about it?**

The figures I cited are correct: paperwork imposed on the American public during FY 1987 and carried forward into FY 1988 was reduced by 106 million hours in FY 1988, or by 5.7 percent. In other words, paperwork for existing Federal programs was reduced by this amount. This is a crude measure of the increased efficiency of Federal programs whose missions were carried out with less paperwork.

The confusion arises from the fact that new paperwork burdens from new Federal programs were also created in FY 1988, partially offsetting the benefit from increasing the efficiency of pre-existing programs. These new programs -- mostly mandated by Congress or ordered by courts -- added 44 million hours of new paperwork to the public burden. Thus the net reduction was 63 million hours, or a 3.3 percent decrease, in FY 1988 compared to FY 1987. The 63 million hour reduction was the figure I cited in my opening statement.

Without the paperwork reduction efforts of the agencies and of OMB, the public would have had to comply with all of the FY 1987 burden plus the new FY 1988 burden.

In the same way, my statement on overall paperwork reduction is also correct: "Without the procedures that the Act has provided since FY 1981, Americans this year would be spending over 500 million more hours to comply with government paperwork than they do." The statement was not that Americans will spend less time this year on paperwork than in 1981, but that the paperwork burden would be even greater without these paperwork reduction efforts.

I can certainly see why the public takes little solace from the fact that, while paperwork may be onerous, it would be even worse without the Paperwork Reduction Act. The battle against excessive paperwork is far from over; sometimes, it seems that we are barely holding the line, pushing back in one area while paperwork balloons in another. I am also not sure that we understand sufficiently the collective paperwork impact on business, particularly small business. Many paperwork requirements may be more burdensome than we have estimated, or the burden may fall disproportionately on small business. We are looking at ways of increasing our understanding of these burdens, and would welcome any suggestions on practical ways to reduce them.

One of the major impediments to progress in reducing paperwork even more is Congressionally-mandated paperwork requirements. We are taking a harder look at proposed legislation and look forward to Congressional cooperation in ensuring that all paperwork imposed on the public is subject to agency, OMB and public scrutiny to ensure that it is the least burdensome necessary.

23. **What more can be done to achieve a greater reduction in paperwork burdens for business and the public? Is there need for another Commission on paperwork to study this issue?**

Greater Congressional restraint in creating new paperwork requirements; increased efforts by agencies to find new and innovative alternatives to existing information collections; greater vigilance by OIRA coupled with stronger review practices; and continued expressions of concern and support by the affected public, would all help. Since the causes of the problem are pretty well understood, another commission study would not seem likely to produce dramatic new insights.

24. **Does OMB believe that the Chadha decision has implications for the allocation of printing functions between the Executive and Legislative branches?**

Yes. The problem is fundamentally this: in order to effectively discharge their responsibilities to disseminate government information, Executive branch agencies must have the ability to manage the means of printing and distributing that information. This management ability is currently placed in another branch of government. Current institutional arrangements would seem to have created a constitutionally impermissible arrangement.

25. **What do you believe the potential impact will be of the decision in the case of Dole v. United Steelworkers on the Paperwork Reduction Act and OIRA?**

We believe the Third Circuit's decision, currently under review by the Supreme Court, fundamentally misconstrues the scope and the purpose of the Act. If the Supreme Court upholds the decision of the U.S. Court of Appeals for the Third Circuit, OMB's ability to carry out the mandate of the Paperwork Act will be severely impaired.

The Third Circuit's decision not only exempts from the Act's requirements the information collection provisions of the Department of Labor's Hazard Communication Standard, which imposed in 1988 the fourth largest paperwork burden of any

Federal requirement, but would have the even more drastic result of preventing OMB review of many other substantially identical disclosure requirements. We have estimated that Americans spend about 250 million hours each year in collecting and communicating information from one private party to another through Federally mandated reporting or recordkeeping requirements. The reasoning applied by the Third Circuit would exempt all of these other disclosure requirements from the review and other requirements of the Act.

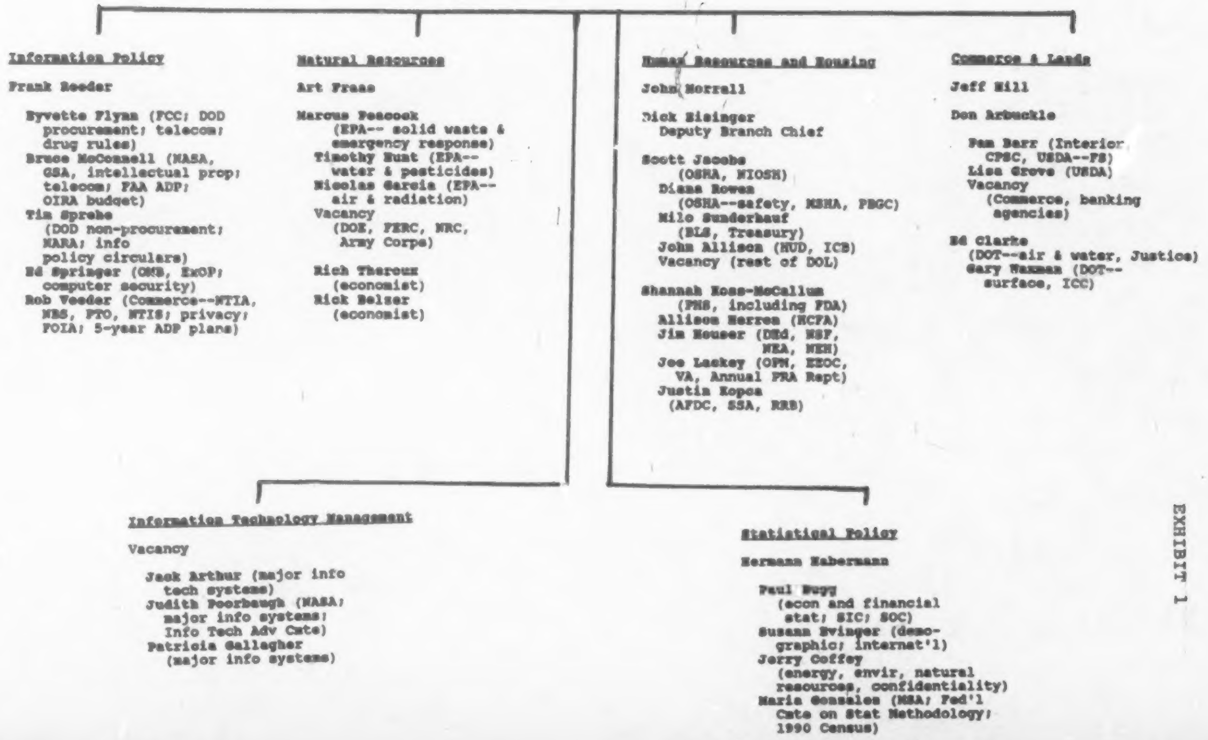
Beyond that, the Third Circuit decision would deny OMB's authority to determine whether a collection of information by an agency is necessary for the proper performance of the functions of the agency. Such a distorted reading of the Act would effectively preclude any substantive review pursuant to the criteria of the Act.

EXHIBIT 1

# OFFICE OF INFORMATION AND REGULATORY AFFAIRS

ADMINISTRATOR--Jay Plager
DEPUTY ADMINISTRATOR--Jim MacRae
Jimmy Mason
David McIntosh

(7/19/89)



**Information Policy**

Frank Reeder

- Byvette Flynn (FCC; DOD procurement; telecom; drug rules)
- Bruce McConnell (NASA, GSA, intellectual prop; telecom; FAA ADP; OIRA budget)
- Tim Sprehe (DOD non-procurement; NARA; info policy circulars)
- Ed Springer (OMB, ExOP; computer security)
- Rob Veeder (Commerce--NTIA, NBS, PTO, NTIS; privacy; FOIA; 5-year ADP plans)

**Natural Resources**

Art Fraas

Marcus Peacock (EPA-- solid waste & emergency response)
- Timothy Hunt (EPA--water & pesticides)
- Nicolas Garcia (EPA--air & radiation)
- Vacancy (DOE, FERC, NRC, Army Corps)

- Rich Theroux (economist)
- Rick Belzer (economist)

**Human Resources and Housing**

John Morrall

Dick Eisinger
Deputy Branch Chief

Scott Jacobs (OSHA, NIOSH)
- Diana Rowen (OSHA--safety, MSHA, PBGC)
- Milo Sunderhauf (BLS, Treasury)
- John Allison (HUD, ICB)
- Vacancy (rest of DOL)

Shannah Koss-McCallum (PHS, including FDA)
- Allison Herron (HCFA)
- Jim Houser (DEd, NSF, NEA, NEH)
- Joe Laskey (OPM, EEOC, VA, Annual PRA Rept)
- Justin Kopca (AFDC, SSA, RRB)

**Commerce & Lands**

Jeff Hill

Don Arbuckle

- Pam Barr (Interior CPSC, USDA--FS)
- Lisa Grove (USDA)
- Vacancy (Commerce, banking agencies)

Ed Clarke (DOT--air & water, Justice)
- Gary Waxman (DOT--surface, ICC)

**Information Technology Management**

Vacancy

- Jack Arthur (major info tech systems)
- Judith Poorbaugh (NASA; major info systems; Info Tech Adv Cmte)
- Patricia Gallagher (major info systems)

**Statistical Policy**

Hermann Habermann

- Paul Bugg (econ and financial stat; SIC; SOC)
- Susann Evinger (demographic; internat'l)
- Jerry Coffey (energy, envir, natural resources, confidentiality)
- Maria Gonzales (NSA; Fed'l Cmte on Stat Methodology; 1990 Census)

EXHIBIT 2

January 1989

## CENTER FOR INFORMATION TECHNOLOGY MANAGEMENT

### Concept Paper

Introduction and Problem Statement: Based on its experiences in reviewing Presidential Priority Systems (PPS)[1] and other major computer and telecommunications projects, the Office of Management and Budget (OMB) has concluded that inadequate technical management is one of the biggest reasons why these initiatives fail or founder. Agency policy officials responsible for managing these projects do not have independent and objective sources of advice on their available options or on the technical viability of staff proposals.

Specifically, senior program officials (i.e., Assistant Secretaries and bureau directors) need access to impartial technical management expertise to help them:

- define the scope of projects;
- explore acquisition strategies;
- monitor contractor and government employee performance;
- evaluate hardware/software development activities, and
- evaluate progress after contracts are awarded.

Evidence of Problems:

Difficulties encountered in Federal information systems initiatives can be summarized as follows:

- The projects lack a business strategy as to how the agency and the needs of its clients are likely to change over the life of the proposed system;
- System development plans are largely designed from the bottom up, reflecting a marginal, incremental expansion of the agency's current systems and mission;

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[1] The PPS program consists of about ten large, critical government information systems projects, such as IRS' Tax System Redesign, FTS 2000, and FAA modernization, described in greater detail in Management of the United States Government FY 1990, pp. 3-77 to 3-84.

- Project proposals are technologically overly ambitious and far beyond either the current state of the practice or what is reasonably likely to be available in the commercial marketplace;

- Proposals fail to include midcourse correction mechanisms that permit the agency to reevaluate a project and change the agency's strategy based on knowledge gained during development.

Options: This paper discusses three[2] complementary options for providing the kind of technical expertise needed to address the shortcomings listed above:

1. rely on private, for-profit firms with expertise in technical management of information systems;
2. rely on existing government organization(s); or,
3. rely on a private, not-for-profit center for information technology management.

Under option #1, relying on the private, for-profit sector, agencies contract with consulting firms for the technical management assistance described above. Central contracting mechanisms such as basic ordering agreements can be developed to simplify contract administration. To a limited extent, the General Services Administration (GSA) is already developing these vehicles.

Under option #2, agencies can rely on existing or expanded centers of expertise to serve as governmentwide resources for technical management. Candidate organizations include the Department of Commerce's National Institute of Standards and Technology and GSA's Information Resources Management Service.

Under option #3, employing a private, not-for-profit center, an existing federally funded research and development center (FFRDC)[3] or a new one would provide technical management support to agencies.

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[2] A fourth option, using blue ribbon panels and other similar ad hoc mechanisms is not presented here. While this technique may be appropriate in exceptional circumstances, it is not feasible to employ it routinely.

[3] A more complete discussion of FFRDCs and procedures for establishing them is contained in Office of Federal Procurement Policy (OFPP) Policy Letter No. 84-1, dated April 4, 1984.

Evaluation Criteria: In selecting from among the options to be discussed below, the following criteria should be used:

- Ability to attract and retain persons with requisite skills in the application of modern information technology to governmental problems;
- Independence of potential conflicts of interest;
- Ability to maintain a confidential relationship with the client agency, which may involve access to sensitive budgetary information;
- Start-up time and cost;
- Ability to provide both a governmentwide view -- to promote cross-fertilization of ideas -- and continuity of support to agencies;
- Flexibility to draw on specialized skills and to reduce staffing levels to respond quickly to changing demands;

Discussion of Options: Each option has its pros and cons which are deliberately stated here in stark terms to promote discussion. Clearly, in each case steps could be taken to mitigate some of the concerns expressed. Further, options posed are not mutually exclusive.

1. Rely on private, for-profit firms with expertise in technical management of information systems.

Pros:

- Gives agencies access to individuals with expertise in the application of innovative technologies in the private sector.
- Easiest to implement. Requires no new resources or other major organizational changes.
- Supports the use of the private sector.

Cons:

- Small consulting firms and the "big eight," accounting firms that have historically performed the functions discussed are all now in the systems building business and could have conflicts of interest.

- o Private, for-profit organizations would be required to have access to government and supplier data, employees, and facilities beyond that which is common (or in many cases, desired) in the normal contractual relationship.

- o Firms in the government consulting business tend to separate their government work from their commercial work so that the opportunities for public-private cross-fertilization are diminished.

- o This option is already available to the agencies and has not ameliorated the problems described above.

2. Rely on existing government organization(s)

Pros:

- o Concentrates government expertise in information technology management.

- o More highly skilled personnel might be attracted to government because of the richness and diversity of the work.

- o Permits greater sharing of ideas and experience within the U.S. government.

- o Personnel involved would have a greater chance of being knowledgeable of government functions and program-oriented strategies.

Cons:

- o The Federal government is unable to compete with the private sector in recruiting and retaining the numbers of qualified, technically trained personnel that are needed.

- o Could expand the Federal workforce to perform functions that might otherwise be done in the private sector.

- o Once established, in-house organizations tend to be difficult to eliminate even if they no longer make a contribution.

3. Rely on a private, not-for-profit center for information technology management.

Pros:

- o Would be able to use private sector personnel practices and pay competitive salaries.
- o Would be capable of establishing the "special relationship" needed to carry out the functions listed above including project follow-up and evaluation.
- o Could maintain the objectivity needed to implement a project without conflict of interest concerns.
- o Would survive or fail based on real value added.

Cons:

- o If not limited in scope and size, could seek to perform work more efficiently and appropriately done by the private, for-profit sector or Federal employees.
- o Could become insulated from the outside world.

Implementation and Financing:

1. Rely on private, for-profit firms with expertise in information technology management.

Little additional work would be required since, as discussed above, agencies already contract for technical management support. GSA or some other agency might be directed to develop several umbrella contracts.

2. Rely on existing government organization(s).

This option could require seeking budget authority to capitalize a Federal activity as well as authorization for initial staffing. Funding and positions would need to be sought in the 1990 budget, beginning October 1, 1989. Recruiting lead time would add several months before a capability could be available to the agencies.

3. Rely on a private, not-for-profit center for information technology management.

   Pursuing this option would require compliance with the notice and comment process prescribed in OFPP Policy Letter No. 84-1 (cited in footnote #3, above), a 90-day process. If an existing FFRDC were selected, work could begin as soon as a contract was awarded. If a new FFRDC were to be started, initial capitalization would need to be obtained before a contract could be awarded, and after award the center would need to organize itself and staff up.

   In either event, a primary sponsor -- the executive agency which manages, administers, or monitors overall use of the center -- would be required for this option. The sponsor would provide the ongoing monitoring and oversight of the center that would be required to ensure: (1) that the center's efforts are focused on the government's major initiatives, (2) that quality is maintained, and (3) that the center does not perform work that the private, for-profit sector should be doing.

Next Step:

OMB intends to conduct an evaluation based on the information it receives in response to its request for public comment using the evaluation criteria set forth above.

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**Statement of**
**Gary D. Bass, Ph.D.**
**Executive Director**
**OMB Watch**

**before the**
**Subcommittee on Government Information and Regulation**
**of the Senate Governmental Affairs Committee**

**regarding**
**Reauthorization of the Paperwork Reduction Act**

**June 16, 1989**

Good morning. My name is Gary Bass, and I am executive director of OMB Watch. OMB Watch is a nonprofit research and advocacy organization based in Washington that since its founding in 1983 has monitored the activities of the executive branch of government, particularly the Office of Management and Budget (OMB). One of our major concerns has been the implementation of the Paperwork Reduction Act and the initiatives of the Office of Information and Regulatory Affairs (OIRA). We publish two monthly publications -- the Monthly Review and the ACTION ALERT -- that chronicle OIRA information collection decision-making.

Before I start, I want to commend the subcommittee and its chairman, Senator Bingaman, for holding these hearings to discuss the reauthorization of the Paperwork Reduction Act. You are providing a much-needed opportunity to look at the successes and the failures of the Act's implementation over the last eight years.

Over the past few years, OMB Watch has undertaken a major effort to improve the public's right to know about government initiatives. This has included examination of the Paperwork Reduction Act since it is an extremely important law affecting federal information policy. To help, we have articulated a number of problems with the Act's implementation. More recently, we have turned our attention and expertise to the task of identifying solutions to these problems.

My intention today is not to attack OMB for past or current abuses -- although abuses certainly exist. Rather, it is to identify major problem areas and offer constructive solutions. I hope the examples in my testimony, including the chronologies provided in the attachments, illustrate why change is needed now.

Let me be clear. The issue is not whether the Paperwork Reduction Act should be reauthorized. Of course it should. Despite the many problems with the Act, it has served a vital role in reducing burdensome paperwork on the public -- a very laudable goal and no small accomplishment.

But that should not stop us from looking at how OIRA has implemented the Act. That is where we have problems.

Despite its name, the Paperwork Reduction Act's purview is much wider than simply paperwork reduction. It directs OMB to develop principles and guidelines to manage the entire life cycle of government information -- its collection, processing, maintenance, dissemination, and archiving. Yet OIRA has devoted most of its time and energy to little else beyond paperwork reduction goals and a form-by-form paperwork review process. And in doing so, it focused almost exclusively on the burden imposed when the federal government tries to collect information -- not on the value or benefit of the information (either to government or citizens), not on areas in which the federal government might need more or better-coordinated information resources management, and not on bringing the executive branch of government into the electronic age. As a result, the whole of federal information policy, as well as specific parts of it, have suffered.

While OIRA ignored large portions of the Act, it turned its attention to reviewing agency regulations -- an activity not even authorized by the Act. Through the combined powers of the Paperwork Reduction Act and Executive Orders 12291 and 12498, OIRA has been able to impose ideological imperatives on agencies, control agency substantive work, circumvent the will of Congress and the courts, and, in general, micro-manage the affairs of agencies. In many cases, this "cradle-to-grave" influence has had a chilling effect on federal civil servants, slowing up, if not stopping, important initiatives to fulfill agency missions.

For example, through the Paperwork Reduction Act, OIRA changed the course of federal research projects on occupational and infectious diseases, edited or eliminated the wording of food and drug labels, reduced the extent of reporting required of industrial polluters, and tried to limit what banks tell customers about their solvency, and more.

Some might say that these are no longer issues, that we have a new "kinder and gentler" Administration. But that begs the real issue. If past abuses could occur, then the law needs fixing -- no matter who is in office.

This is not to say that the new OIRA hasn't done things that can't be praised or criticized. For example, on the praise side, OIRA should be congratulated for its recent notice regarding its policy positions on Circular A-130. It serves as a positive first step. Nevertheless, there is nothing to stop OMB from changing its policy perspective next year or in the next Administration. Federal information policy should not be held hostage to the political priorities of the Administration in power. Through reauthorization, we should fix past problems and codify in law principles of an affirmative federal information policy.

More specifically, in reviewing OIRA's activities, this Subcommittee should focus on four major areas:

- Paperwork clearance problems;
- Development of dissemination policies and principles;
- OIRA's reach into agency regulatory activities; and
- Shifting the focus of the law to information resources management and the role of OIRA to assisting agencies in managing information resources to carry out their missions.

## Why Should People Care About OIRA?

Even a quick look through newspapers reveals stories about: Women who work at video display terminals (VDTs) having miscarriages; Workers at paint factories coming down with rare forms of skin cancer; Women dying from Toxic Shock Syndrome (TSS) after mistakenly choosing packages of highly absorbent tampons.

What do these stories have to do with OMB and paperwork? The answer is: Plenty.

In 1985, the National Institute for Occupational Safety and Health (NIOSH) proposed a peer-reviewed study of the possible link between reproductive problems in women and working at video display terminals, it ran into a major obstacle: OMB and the Paperwork Reduction Act.

In 1988, when the Occupational Safety and Health Administration (OSHA) tried, under court order, to expand to the non-manufacturing sector its regulation that gives workers the right to know about deadly chemicals they come in contact with in the workplace, it ran into a major obstacle: OMB and the Paperwork Reduction Act.

And lest we dismiss these examples as ideological excesses of the Reagan administration, this year when the Food and Drug Administration (FDA) proposed a regulatory scheme for uniform labeling of tampons, it ran into a major obstacle: OMB and Executive Order 12291.

These examples, which OMB Watch and others have documented over the years, are not isolated cases. There are too many more. But rather than spend my time today documenting them, I've attached a detailed chronology of three examples that show:

- How OIRA uses E.O. 12291 to interfere in agency regulations (the current tampon labeling issue);
- How OIRA uses the Paperwork Reduction Act to control agency regulations (the worker right to know regulations); and
- How OIRA uses the Paperwork Reduction Act to control what information agencies can collect (the "Dress Rehearsal" for the 1990 Census).

The point here is that OIRA has a very direct and significant effect on the public. Admittedly, discussions about the Act and OIRA powers have gotten lost in technical jargon, legalistic debate, and general arguments about administrative decision-making -- making it difficult for the public to understand the connection between an OIRA decision and its effect on a government initiative they care about. But we must not forget that nearly every government program and operation -- from trade data to our statistical infrastructure, from environmental regulation to air quality data, from health and safety recordkeeping and reporting requirements to removal of asbestos in our public schools, from general surveys to specific forms for receiving government benefits and entitlements -- involves information, which automatically involves OIRA.

In fact, since the 1986 reauthorization of the Act, appreciation of OIRA's clout over agency activities has grown. In response, a Working Group on Information Policy, chaired by OMB Watch, has formed to follow these and other information issues. This Working Group, which involves unions, professional associations, civil libertarians, librarians, consumer groups, environmental health and safety concerns, low-income groups, and many others, demonstrates that a constituency concerned about the Act and OIRA activities has also grown.

## Fixing the Act

The remainder of my testimony describes cross-cutting problems with the Paperwork Reduction Act and provides suggestions for dealing with them during reauthorization.

**PROBLEM #1:** OIRA has focused too much on paperwork reduction at the expense of improved information resources management.

By concentrating on paperwork reduction, OIRA has virtually ignored other important responsibilities assigned it under the Act. To name a few, OIRA was supposed to develop uniform policies and guidelines for information resources management, initiate and review legislative and regulatory proposals to improve information management, and promote greater information sharing among agencies through the Federal Information Locator System (FILS). It has not.

The name of the Act itself may offer some explanation for the mistakes made in its implementation. After all, information management involves much more than paperwork reduction, and government information is much more than paper.

The problem is that the Act's focus is oriented to viewing all paperwork as a burden that should be reduced. As I indicated earlier, paperwork reduction is a laudable goal -- but in the context of improving our government's information infrastructure and assisting agencies in meeting their statutory missions. While paperwork may have burdens associated with it that are worth reviewing, it is essential to clarify the benefits and to review those as well.

Furthermore, government information comes in a host of new forms, including computer databases, as well as even more technologically advanced devices. We have entered the age of electronic information, yet our nation's most important federal information laws and those responsible for implementation have not kept up.

**SOLUTION:** To start, we recommend renaming the Paperwork Reduction Act the Federal Information Resources Management Act and changing the name of OIRA to the Office of Information Resources Management. In name, at least, these changes will help OMB widen its focus from merely managing paperwork to guiding the whole of federal information policy. In addition, the Senate should ensure that future OIRA administrators have experience in the field of information policy and information resources management by making that an issue during confirmation hearings, as well as how nominees plan to allocate resources to accomplish the goals of the Act.

Second, the purposes and goals of the Act need to be overhauled to reflect that:

(1) Public information is essential to a democratic society; that it's a valuable national resource that provides

citizens with knowledge about their government, society, and economy -- past, present, and future; and

(2) The federal government has an affirmative responsibility to ensure the free flow of public information between the government and its citizens.

The goal of minimizing paperwork burdens should be consistent with these two principles and put in the context of (a) what is needed to help agencies achieve their statutory missions, (b) what is needed to improve government efficiency, (c) how to maximize the usefulness of the information, and (d) how to maximize public access to information.

Third, the Act should make clear its intentions are to put the locus of decision-making in agencies, where the delegation of responsibility and expertise exists. In doing so, Congress should re-establish the importance of agency information resources management functions and encourage agency IRMs to play a more active role in agency decision-making.

Congress should assert these types of over-arching and affirmative principles of federal information policy, along with more clearly spelled out corresponding management responsibilities and deadlines, when appropriate, for OMB.

**PROBLEM #2: The shortcomings of the form-by-form paperwork clearance process range from problems in policy to problems in procedures.**

One serious policy problem, for example, is that OIRA too often supplants or simply stops agency work through paperwork review. For example, in 1988, OIRA brought the work of OSHA in several areas to almost a complete halt. By denying OSHA clearance to conduct three specific surveys, OIRA prevented the Labor Department agency from completing work on the regulation of lead, three asbestos-like substances, and bloodborne diseases in a variety of workplaces.

Compounding the affront was the fact that when it requested the surveys, OSHA explained that it needed the information to complete cost-benefit analyses required for proposed regulations by Executive Order 12291, which are also administered by OIRA. So not only did OIRA prevent OSHA from collecting information, by doing so it also prevented the work on the regulations to go forward.

It's also too easy for OIRA to deny an agency clearance for a paperwork proposal simply because it "lacks practical utility" -- with no further explanation.

An example of a procedural problem is the lack of a meaningful public comment period. The paperwork review process is supposed to encourage public participation -- that's one of the reasons for publishing notices of paperwork submissions in the Federal Register. But while OIRA has statutory deadlines for making its paperwork decisions, the public can't know how quickly or slowly OMB will reach its decision. For example, sometimes OMB takes the full 90 days to review an information collection request, sometimes it takes less than 30. Without a set public comment period, people can't know if their comments reach OMB before the decision has been made.

Furthermore, there is no easy way for the public to truly know what an agency is proposing. What is listed in the Federal Register is the technical name of the agency proposal. Most often, the public cannot even tell what it is about. As a result, the public must call the agency for a copy of the proposal submitted to OIRA. These packages take, on average, around a month to arrive from the agency and are daunting in their complexity. By the time someone has received the agency packet and tried to understand what the agency is proposing, most often the OIRA decision has been made -- whether the person actually knew that he or she could comment to OIRA.

**SOLUTION:** First, Congress should reassess the review criteria. At a minimum, "practical utility" should be redefined to include not only practical utility to the agency, but also to the public.

Second, the Act should require a public record be created at OIRA that contains detailed justification for paperwork actions. OIRA Desk Officers should put in writing why an agency submission has not been approved, including why it was disapproved, approved for a period less than requested, or why an agency withdrew its submission to OIRA.

Third, training for the Desk Officers needs to be improved for consistency among OIRA decisions. Currently, comments on decisions often conflict depending on the reviewer.

Fourth, Congress should make the procedures and criteria for paperwork review more specific -- and limited. For example, OIRA decisions should be done within 60 days unless an extension is expressly authorized by the President. Congress should also set a public comment period, with a specific beginning and end, for paperwork proposals. In doing so, agencies should be required to publish in the *Federal Register* a summary -- in terms understandable to the lay public -- what has been submitted to OIRA for review and where to comment.

Finally, the public docket room at OIRA needs significant improvement. Currently, public comment letters may be in the files, may be with the Desk Officer, or may be somewhere else entirely. There is no log to identify where official documents are. As a result, it is not unusual to find items missing from the files.

**PROBLEM #3:** Over the last decade, the country's statistical base has eroded.

The Paperwork Reduction Act assigned OIRA the responsibility of improving the collection, interpretation, and dissemination of federal statistics by directing the office to develop and implement government-wide statistical policies and guidelines, and evaluate and coordinate statistical activities. But the first thing OMB did with these new responsibilities was to eliminate the statistical policy office as a separate entity and incorporate it into OIRA, reducing the overall number of statistical staff and assigning them also to do paperwork and regulatory review.

OMB then began to evaluate statistics within the context of burden and paperwork reduction, rather than within a whole and well-rounded approach to federal statistical needs. Coupled with budgetary and personnel cuts in statistical agencies, this spelled disaster for U.S. statistics.

In the last year of the Reagan Administration, OMB launched a frontal assault on the Census Bureau's data collection efforts. During the first six months of 1988, the Census Bureau, the nation's premier statistical agency, had the most difficulty of any federal agency in getting OIRA approval for proposals to collect information. OIRA denied clearance for a full 17 percent of all proposals, approved another 17 percent for less than six months, and the Bureau withdrew another 4 percent after submission. On average, Census Bureau reviews also took longer than those of other agencies -- 74 days.

While OIRA ruthlessly chopped away at data the Census Bureau wanted to collect, it ignored other areas of the nation's statistics that many people believe need improvement. For example, a General Accounting Office (GAO) report, released two months ago, ("Federal Statistics: Merchandise Trade Statistics, Some Observations," GAO/OCED-89-1BR) found several problems with national merchandise trade statistics.

The report noted that U.S. monthly trade statistics are published on a less timely basis than those of Japan, Canada, the United Kingdom, and France. In addition, the report found that "[t]he lack of substantial verification of export documents and the absence of an adequate mechanism to assure complete and timely reporting of exports diminish the accuracy of the export data." (p. 2) As far as we know, OIRA has not raised questions about the need to improve the statistical infrastructure.

Another example worth mentioning is the Census Bureau's efforts to measure the effect of deregulation on the passenger bus industry. In May, 1988, and again in March, 1989, OMB prevented the Census Bureau from conducting a survey on the subject. The survey was also part of a larger effort by the Commerce Department to beef up the amount of economic information collected on the service industries. Last summer, a former commissioner of the Bureau of Labor Statistics went on record questioning the adequacy of the nation's index of leading economic indicators precisely because it doesn't incorporate enough information on service industries.

SOLUTION: Through reauthorization, Congress should change OMB's orientation in statistical policy by at least setting out specific criteria for OMB to use when reviewing proposals for collecting statistical information and encouraging OMB also to evaluate where the nation's statistical base needs improvement or expansion. In addition to a qualified chief statistician, as provided for in the 1986 reauthorization, OMB needs to revise its statistical policy directives to affirm broad policies and coordinate and improve annual budgeting for statistical agencies.

PROBLEM #4: OIRA's past guidelines for disseminating government information have been inadequate.

We have found two separate problems in this area. The first is that OIRA's Circular A-130, "Management of Federal Information Resources," as it relates to dissemination practices, is poorly constructed. Its narrow-minded focus on privatizing information functions and its lack of sensitivity to federal agency responsibilities to disseminate public information has caused a great deal of mistrust and anger. A proposed revision released in January that would have applied general Circular A-130 principles to electronic information exacerbated the problem.

This week, OIRA responded to the problems in the content of the January proposed revision by withdrawing the proposal. Moreover, in an excellent discussion of the comments received on that proposal, OIRA outlined a complete revision of the Circular. OIRA's new position repudiates any intention to make OMB an Information Czar to control government information operations, affirms the role of agencies to develop information dissemination activities, and proposes concrete changes to decentralize information management. OIRA should be applauded for its reversal of previous policies, which would only have led to micro-management of agency information activities.

OIRA's announcement, however, is not a final rule -- only a general framework for policy-making. OIRA could decide at any time to revert to its policy direction of the last eight years because the Act does not discuss what policies Congress has in mind.

The second problem is much broader. Our printing laws have not kept pace with the times, particularly as we have moved into the electronic information age. Any OIRA plans for disseminating information inevitably overlaps with our printing laws, which vest in the Government Printing Office (GPO) the responsibility for disseminating print materials. Should agencies be required to disseminate all information, regardless of format, through GPO? Or should they be permitted to disseminate without going through GPO? Will federal depository libraries serve as a "safety net" for public access to government information? Congress needs to address many other fundamental policy choices in this area.

SOLUTION: The most critical needs, in both the Paperwork Reduction Act and in the printing laws, are to reaffirm federal responsibility to collect and disseminate information for the benefit of everyone in society (recognizing the benefits of information, not just its burdens) and to advance innovative ideas to manage information in an electronic age.

It is essential that the Paperwork Reduction Act be amended to add specific principles that encourage agency dissemination of information. At a minimum these principles should cast a wide net to include all types of public information, regardless of format (e.g., print or electronic), and encourage agencies to provide electronic access to public information. The principles must state clearly that the federal government has an affirmative obligation to disseminate electronic as well as printed government information to the public in a useful manner and at a reasonable cost.

Secondly, this Subcommittee should undertake a long-term effort to work with other appropriate committees in Congress to resolve the overlap and potential inconsistencies created by other laws, such as the printing laws. For example, the distinction between access as invoked by the Freedom of Information Act (FOIA) and dissemination as invoked by the Paperwork Reduction Act is becoming less and less clear as we move into the electronic information age. Making a consistent, uniform, and deliberate federal information policy is essential.

**PROBLEM #5: OIRA spends a disproportionate amount of time conducting regulatory review both outside of and within the scope of the Paperwork Reduction Act.**

The same staff who conduct paperwork reviews are also responsible for reviewing all federal agency regulations, in accordance with two Executive Orders, numbers 12291 and 12498, signed in 1981 and 1984, respectively. Agencies cannot undertake any activity that might possibly lead to rulemaking or publish regulations unless they have clearance from OIRA to do so. E.O. 12498 requires OIRA to analyze agency activities for consistency with the President's policies and procedures; E.O. 12291 requires that the benefits of a regulation outweigh its costs, with OIRA having the final say-so. (Note: While E.O. 12291 does not actually give OIRA approval or disapproval authority, the fact that OIRA can delay a regulation indefinitely from being published does give OIRA virtual veto power.)

OIRA has used the power in these orders to change or halt regulations. The list of offenses is long and well-known: asbestos, grain dust, and underground storage tanks for dangerous chemicals -- to name only a few. OIRA has also used the regulatory review process as a delay. Some regulations go into OIRA never to see the light of day again -- kind of a black hole.

While conducting its review of agency regulations, OIRA has also met off-the-record with industry representatives that have substantial interest in the scope of particular regulations, changed the way agencies evaluate the costs and benefits of regulations, and imposed ideological imperatives on agencies. Another significant problem with the regulatory review process is that OIRA's actions and decisions are generally out of public sight because they are not part of the agency rulemaking record. In fact, many of OIRA's regulatory actions occur without any documentation.

Regulatory review under the two Executive Orders is not always OMB's only route into the substance of rulemaking, however. When regulations call for information to be collected -- for example, in the form of recordkeeping or reporting requirements -- OIRA gets to review the regulatory paper. Its disapprovals can have the effect of reviewing the entire regulation again if the paperwork is an essential part of the regulation.

Even more striking is what occurred during the 1986 reauthorization. By eliminating the distinction between regulatory paperwork and non-regulatory paperwork, Congress established something akin to a "regulatory sunset" provision. The reason: since OIRA can approve paperwork for a maximum of three years, it means that regulatory paperwork must pass an OIRA screening at least every three years -- subjecting the regulation to scrutiny. Furthermore, since the 1986 reauthorization extends the "public protection" clause to regulatory paperwork, OIRA can virtually nullify a regulation through its paperwork.

This has set up a bizarre situation where even criminals can get off scott-free because OIRA did not approve regulatory paperwork. For example, earlier this year the 9th Circuit Court of Appeals, in United States v. Bruce Smith (9th Circuit, No. 87-3020, 866 F2d 1092), reversed a criminal conviction because the project plan for an Alaskan mining claim, which was to be filed (and was not completed), did not have OIRA approval. As a result, even the party guilty of not complying with the regulation was found not guilty simply because the paperwork requirement did not contain a paperwork control number.

SOLUTION: The Executive Orders (12291 and 12498) should be rescinded and Congress should set specific procedures and criteria for executive branch regulatory reviews. While Congress works on this broader initiative, it should take immediate action with regards to the Paperwork Reduction Act.

First, new procedural safeguards need to be put in the law. OIRA should be required to document all communications, written and oral, with governmental and non-governmental entities about a rulemaking under review, as part of the public record. A public log needs to be created, much like the one for paperwork, that documents the name of the proposed regulation, the agency submitting it, the date of submission to OMB, date of any OMB action on the proposal, the action taken, and why. The OIRA public docket should contain copies of all agency draft submissions, written explanations for OMB's decisions, and copies of all communications.

Second, regulatory reviews should not be done by the same people who are reviewing information collection activities, handling statistical policy and coordination, and coordinating information resources management functions. This creates an overwhelming workload, an impossible array of skills, and opportunity for potential abuse as has been repeatedly documented.

Third, a distinction between regulatory paperwork and non-regulatory paperwork needs to be established. The distinction is an important one. As the Act stands now, OMB can force the review of regulatory paperwork whenever it pleases and impose the equivalent of regulatory sunset by withholding paperwork approval.

At a minimum, the regulatory paperwork procedure should not have a three-year limit. Once approved by OIRA, agencies should report annually to Congress on their regulatory paperwork and the necessity for it. OIRA and the public should also be able to comment on the agency assessments. Finally, the so-called "public protection" clause should not cover regulatory paperwork.

**PROBLEM # 6:** There is no formal means for agencies to appeal OIRA decisions.

There is no formal opportunity for agencies to appeal OIRA decisions. Except for independent regulatory agencies, once OIRA makes a paperwork or regulatory decision, agencies have little recourse if they are unhappy with it. What we find is agencies doing one of three things: (a) giving up; (b) resubmitting to OIRA; or (c) making changes to meet OIRA's concerns. Besides demoralizing agency staff, this can leave the public as the real loser.

**SOLUTION:** Create a process for agencies to appeal OIRA decisions. The appeals board should be comprised of agency information resources management experts and OMB should not be permitted to sit on the board. All appeal decisions should be part of the public record.

In an agency appeals a regulatory paperwork decision, and until the appeals board makes a decision, the agency should be given permission to continue the work.

**PROBLEM #7:** Congressional oversight of the Act's implementation has been piecemeal, creating a "crisis" atmosphere during reauthorization.

Congressional oversight of the Paperwork Reduction Act has been spotty, coming mostly in response to public outcry over a particularly controversial OMB decision. While it's important for Congress to be concerned about particularly significant or controversial paperwork and regulatory decisions, it needs the opportunity to take a broader, policy-oriented approach to overseeing OMB's activities.

The subcommittee need only consult records from hearings about OIRA's paperwork decisions about the Dress Rehearsal for the Decennial Census two years ago (see Attachment C of my testimony). When OIRA raised questions about the questions proposed for the Decennial Census, an unprecedented public outcry arose over the interference, as well as the substance of OIRA's questions.

Congress got involved, questioning OIRA's motives and procedures, but only as they related to the issue at hand, not the overall context in which the decision was made and the process surrounding it. Part of the problem was that this subcommittee did not exist then, so several committees took it upon themselves to look into the matter separately -- the House Select Committee on Aging, the Joint Economic Committee, and so on.

Equally as important as the need for ongoing oversight is the need for institutionalizing the reauthorization process. These are the first reauthorization hearings since 1984. The last time the Act was reauthorized, in 1986, there was a crisis atmosphere, with the House of Representatives supporting the defunding of OIRA. In the end, the reauthorized bill, hurriedly attached to a continuing resolution, passed without any public or congressional debate.

Even now, as we approach reauthorization, there is somewhat of a crisis atmosphere. There is very little time in which to draft and pass a bill. Furthermore, both this Subcommittee and the House are simultaneously learning how the Act has worked and the many technical nuances associated with the law.

**SOLUTION:** The creation of this subcommittee and our being here today help alleviate some of the problem. We hope the members of this subcommittee will continue to be active in overseeing how OMB meets its responsibilities under a reauthorized Paperwork Reduction Act.

To improve the overall process, we recommend a one- or two-year reauthorization requirement to allow more frequent airing of the kinds of concerns addressed at the hearings today and last Monday. It is very important for Congress to have a studied approach to needed improvements -- and not to face them in the same atmosphere as in 1986.

Because the Paperwork Reduction Act is one of the most powerful cross-cutting laws, giving power to undoubtedly our most powerful agency in government, it is essential that Congress maintain a "hands on" approach to oversight by shortening the reauthorization to two years, or even less.

Thank you, Senator Bingaman and esteemed members of the Subcommittee for inviting me to testify today. We look forward to working with you and OMB in drafting new legislation that fixes past problems and creates new opportunities to harness the electronic information age.

Testimony of Gary D. Bass, Ph.D.
Attachment A

## OIRA'S CONTROL OF REGULATIONS (THROUGH THE USE OF EXECUTIVE ORDER 12291)

### CHRONOLOGY OF FDA'S LABELING FOR TAMPONS RULE

1981 -- Scientific reports link the use of high-absorbency tampons to Toxic Shock Syndrome (TSS), a serious and potentially fatal disease that affects women while they are menstruating. According to the Centers for Disease Control (CDC), almost 2,900 cases of TSS were reported between 1979 and 1986 (that number fell sharply after one brand, Rely, was removed from the market). Currently, CDC reports about 10 cases a month.

April, 1981 -- The Food and Drug Administration (FDA), an agency with the Department of Health and Human Services (HHS), concludes that women who use high-absorbency tampons run a greater risk of contracting TSS than others.

1982 -- The National Academy of Sciences's Institute of Medicine recommends that women minimize their use of high-absorbency tampons.

June, 1982 -- FDA proposes a rule requiring tampon manufacturers to include information about TSS on or inside tampon packages, including a statement advising women to use tampons with the minimum absorbency necessary. The regulation does not, however, require manufacturers to use standardized absorbency terms or disclose the absorbency of one brand in relation to others.

June, 1982 -- Public Citizen's Health Research Group (HRG) petitions FDA to establish a test method for determining absorbency, as well as a uniform nomenclature for disclosing absorbency on tampon labels.

September, 1982 to April, 1983 -- FDA appoints a special task force to establish voluntary standards for tampon absorbency testing and labeling.

April, 1984 -- FDA concludes that the test methodology accepted by the task force will measure tampon absorbency with reasonable accuracy, but the task force tells FDA that it cannot agree on uniform labeling.

July, 1984 -- Because FDA concludes that a labeling regulation is necessary to ensure that consumers meaningfully compare different brands for their absorbency, and it promises to "develop a proposed absorbency test and labeling requirement as rapidly impossible."

June, 1987 -- FDA drafts a proposal that would require the disclosure of absorbency rates on tampons and sends the proposal to OMB's Office of Information and Regulatory Affairs (OIRA) for the cost-benefit analysis review required of federal regulations by Executive Order (E.O.) 12291.

The original draft FDA submitted states: "FDA has concluded that the use of nonoverlapping numerical absorbency ranges with standardized absorbency terms will provide unambiguous and accurate absorbency and relevant risk information to consumers, and takes advantage of consumer familiarity with current terms." (Emphasis added)

FDA's proposal offers the following ranges and corresponding terms:

| | |
|---|---|
| Absorbency under 6 grams | (No standardized term) |
| Absorbency 6-9 | Regular |
| Absorbency 9-12 | Super |
| Absorbency 12-15 | Super Plus |
| Absorbency above 15 | (No standardized term) |

June, 1987 -- A proposal for "Tampon Labeling," as it appears in the administration's annual Regulatory Agenda, includes the range system, which is favored by Tambrands, the leading American tampon manufacturer, but not Playtex, the number-two tampon manufacturer, which endorses a "point system." The timetable set for the publication of a Notice of Proposed Rulemaking (NPRM) is October, 1987.

August, 1987 -- After another government study confirms the association between high tampon absorbency and risk of TSS, HRG files another petition asking FDA to require tampon packages to provide absorbency information in the form of standardized ratings and eliminating the use of confusing descriptive terms, such as "regular" and "super."

April, 1988 -- FDA Commissioner Frank Young tells HRG lawyers that OIRA is delaying the tampon labeling proposal.

The new Regulatory Agenda again includes the proposal but lists the date of an NPRM as August, 1988. In addition, the Regulatory Agenda entry states: "The NPRM has been delayed because of a need to re-evaluate and refine the alternatives to allow the least disruption to current marketing and labeling of tampons."

June, 1988 -- HRG files suit in federal district court against FDA, HHS, and OMB, challenging the delay in issuing the tampon regulation.

Summer, 1988 -- According to FDA official Les Weinstein, OMB forces FDA to withdraw the requirement to standardize absorbency descriptions (super, super-plus, and so forth) because the burden and expense it would impose on some manufacturers.

September 23, 1988 -- FDA's revised proposed rule appears in the Federal Register. In contrast to the draft that was sent to OIRA in June, 1987, the revised proposal states: "This proposal does not include restrictions on the use of absorbency terms. The agency invites comments on whether further action to standardize labeling is warranted in order to ensure that tampon absorbency information is conveyed to consumers in a clear, nonmisleading fashion."

FDA's proposal offers the following ranges and corresponding (and less descriptive) terms:

| | |
|---|---|
| Absorbency 6 grams and under | A |
| Absorbency 6-9 | B |
| Absorbency 9-12 | C |
| Absorbency 12-15 | D |
| Absorbency 15-18 | E |
| Absorbency above 18 | F |

October 14, 1988 -- OIRA official Richard Eisinger tells OMB Watch that he visited a tampon manufacturer. The visit, he says, convinced him that standardization of terms would put that manufacturer at a competitive disadvantage, as well as impose undue expenses on all manufacturers.

December 20, 1988 -- Playtex Family Products submits comments to FDA and OIRA stating it supports a single number system to designate absorbency, rather than a range system. One reason the company opposes the range system proposed is that it would "force Playtex to reduce the absorbency of its Regular product."

December 22, 1988 -- The public comment period on the NPRM. In all, FDA receives more than 270 public comments.

February 14, 1989 -- FDA sends the paperwork contained in the NPRM to OIRA for review under the Paperwork Reduction Act.

March 29, 1989 -- FDA sends OIRA a draft of the final rule, as required by E.O. 12291. In the draft, FDA says it "has concluded, based on the comments and on its own analysis, that simply adding a letter designation to existing tampon labeling would not be sufficient to provide to consumers truthful, accurate, and nonmisleading information about the absorbency of the product at the time of purchase." As a result, FDA proposes to require standardization of the currently used absorbency terms on tampon labels, in addition to the letter designating absorbency.

FDA's new proposal offers the following ranges and corresponding terms:

| | | |
|---|---|---|
| Absorbency of 6 or less grams | A | Junior |
| Absorbency of 6-9 | B | Regular |
| Absorbency of 9-12 | C | Super |
| Absorbency of 12-15 | D | Super Plus |
| Absorbency of 15-18 | E | none |
| Absorbency of above 18 | F | none |

April 19, 1989 -- OIRA clears the paperwork through October 31, 1989. The decision is moot, however, because OIRA is reviewing the re-proposed rule and is suggesting changes to FDA -- again, moving away from standardized labeling. Nevertheless, many of the public comments FDA receives indicate strong support for standardized descriptions, along with ranges, appearing on tampon packages.

So FDA proposes new terms, such as "light flow" and "heavy flow," to correspond to the ranges. Reportedly, OIRA makes FDA compromise on the issue, allowing other, currently used, descriptions to remain on the labels.

April 25, 1989 -- FDA sends another draft of the final rule to OIRA for review under E.O. 12291. This draft substitutes a whole new set of absorbency terms from its submission a month ago, but allows for manufacturers also to keep their current terms on their packages. The new draft explains: "FDA has concluded that by requiring the use of an entirely new set of absorbency terms corresponding to the six absorbency ranges, each of which conveys absorbency information, and by requiring that these new terms be on the principal display panel, separate from, and more prominent than any term other than the corresponding numerical range of absorbency, the final rule will ensure that labeling will be clear and will facilitate accurate interbrand comparisons."
This proposal offers the following ranges and corresponding terms:

| | |
|---|---|
| Absorbency of 6 grams and under | Low absorbency |
| Absorbency of 6-9 | Medium absorbency |
| Absorbency of 9-12 | Medium to high absorbency |
| Absorbency of 12-15 | High absorbency |
| Absorbency of 15-18 | Very high absorbency |
| Absorbency of above 18 | Highest absorbency |

May 3, 1989 -- FDA sends another draft of the rule to OIRA. But this time the agency calls it a "reproposed rule," instead of a "final rule." The explanation: "[I]n an abundance of caution and with a desire to provide all interested persons with the opportunity for full participation, [FDA] concludes that additional comments should be solicited."

In addition, in the reproposed rule, FDA only reaches tentative conclusions about letter designations and whether they would provide consumers "with clear and nonmisleading information about the absorbency of tampons at the time of purchase."

May 10, 1989 -- Attorneys for Tambrands, Inc., write to OIRA Administrator Jay Plager to offer support for the proposed absorbency ranges, as long as tampon manufacturers will be allowed to continue to use current absorbency terms, such as "regular," "super," and "super plus." The letter concludes: "We would therefore like to have the opportunity to meet with you and discuss Tambrands' position on the proposed rule. We would not object to FDA's participating in such a meeting if you so desire."

June 12, 1989 -- FDA publishes its reproposed rule in the Federal Register (p. 25076). The ranges are the same as specified in the April 25 proposal. The explanation offered this time for the fact that it is a reproposed rule rather than a final rule is as follows: "[N]either tampon manufacturers nor consumers were afforded an opportunity to comment on the particulars of the labeling scheme included in the reproposal. Publication of this document as a final rule at this time, without further opportunity for public participation could, therefore, result in litigation challenging the rule on procedural grounds and delay promulgation of a final tampon absorbency labeling rule even further."

The reproposal also contains the following new paragraph, not in any of the drafts to date: "In addition to the comments on these revisions, FDA is requesting comments on the likelihood of an outcome, due to the use of fixed nonoverlapping ranges, that would be inconsistent with the goal of enabling consumers to choose the least absorbent tampon needed to control menstrual flow and thus reduce their risk of TSS." In other words, FDA invites comments on why the regulatory scheme it has chosen -- nonoverlapping absorbency ranges -- will not meet the goals it has stated.

Testimony of Gary D. Bass, Ph.D.
Attachment B

## OIRA'S CONTROL OF REGULATORY PAPERWORK (THROUGH THE PAPERWORK REDUCTION ACT)

## CHRONOLOGY OF OSHA'S HAZARD COMMUNICATION STANDARD

December 29, 1970 -- Congress passes the Occupational Health and Safety Act. Among other provisions, the Act requires regulations to be issued to "prescribe the use of labels and other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure."

1974 -- As required by the Act, the new Occupational Safety and Health Administration (OSHA) establishes a Standards Advisory Committee on Hazardous Material Labeling.

June 6, 1975 -- The Committee's report to the Assistant Secretary for Occupational Safety and Health contains recommendations a "total system" for hazard communication, which includes categorizing and ranking chemical hazards and providing labels, material safety data sheets (MSDSs), and training programs for all workers.

1976 -- House Committee on Government Operations recommends that OSHA require manufacturers to disclose toxic ingredients in their products and disclose the information to workers.

January 28, 1977 -- OSHA publishes an Advance Notice of Proposed Rulemaking (ANPRM) on chemical labeling (42 FR 5372). The notice invites comments from "all interested persons" and addresses all employers.

The agency receives 81 comments, most of which support the need for the rule. Opinions vary, the agency says, about the rule's approaches. Comments received from employers in non-manufacturing industries support a comprehensive hazard communication system for their workplaces.

January 16, 1981 -- OSHA publishes an Notice of Proposed Rulemaking (NPRM) on "Hazards Identification" (46 FR 4412). The rule requires manufacturers to assess hazards using specific procedures and to label containers. The notice invites comments on the appropriate scope of coverage and tells employers in industries not covered that they should be prepared to participate.

February 12, 1981 -- OSHA withdraws the proposal for further consideration of regulatory alternatives (46 FR 12214). The action was forced by Vice President Bush's Task Force on Regulatory Relief.

March 19, 1982 -- OSHA publishes a new NPRM, "Hazard Communication" (47 FR 12092). It requires producers of chemicals to evaluate them to determine hazards, label containers, and provide MSDSs to purchasers, and its requires manufacturing sector employers to maintain and provide access to MSDSs and train workers. As in the 1981 notice, employers outside the manufacturing sector were given notice that the Hazard Communication Standard might apply to them and were invited to comment.

September 20, 1983 -- OSHA requests OIRA approval for information collection required by the Hazard Communication Standard. That information, also known as "regulatory paperwork," includes the labeling and MSDSs requirements.

November 25, 1983 -- OSHA publishes the final rule (48 FR 53280). The rule's scope is limited to the manufacturing sector. OSHA says it plans to decide about expanding the rule later, after its implementation in the manufacturing sector.

November 9, 1983 -- OIRA approves the paperwork in the rule through December 31, 1986. Before doing so, however, the OMB office consults with representatives of Dow Chemical, Dupont, the Business Advisory Council on Federal Reports (now the Business Council on the Reduction of Paperwork), and the Flavor and Fragrance Industries Association (name unclear in OIRA files).

In comments accompanying the approval, OIRA writes: "A comment was raised concerning the problem of evaluation of mixtures [Dow, Dupont]. Their concern was that an undue burden may be involved. If mixtures have not been tested then ingredients must be listed (hazardous ingredients). The issue was raised with OSHA. The need for objective evaluation (i.e. testing of a mixture) according to OSHA would preclude chemical manufacturers from making arbitrary evaluations of a mixture's hazards. Any problems with interpretations of the extent of testing or the use of testing results from a similar mixture would be dealt with in the compliance directive.

"[The Flavor and Fragrance Industries representative] asked for a clarification of whether OIRA had published a request in the Federal Register for comments on this action. OIRA did not. [The Business Advisory Council representative] inquired as to the correspondence of the paperwork submission and the OSHA rule. The paperwork submission provides only the recordkeeping components of the rule as required for review of the expected burden. The copy of the paperwork submission was given to [the Business Advisory Council] by DOL."

May 24, 1985 -- In ruling on a suit filed by the United Steelworkers of America and Public Citizen (United Steelworkers v. Auchter (763 F.2d 728), the U.S. Court of Appeals for the Third Circuit upholds the standard in most respects but orders OSHA to reconsider three issues:

> The trade secret definition, so it won't include chemical identity information that is readily discoverable through "reverse engineering."
>
> Giving access to trade secret information to employees and their collective bargaining representatives, in addition to health-care professionals.
>
> The application of the standard to employees in non-manufacturing industries. The Secretary of Labor, unless he could state reasons why this application would not be feasible, should order it.

Subsequently -- OSHA commissions a study of the economic effects of extending the standard to the 50 major non-manufacturing industry groups within its jurisdiction.

November 25, 1985 -- OSHA requests approval for revision of Hazard Communication Standard's paperwork.

November 27, 1985 -- OSHA issues an ANPRM seeking public comment on current hazard communication practices outside manufacturing and the likely effect of extending the standard (50 FR 48794). The agency receives more than 200 responses and says it plans to publish an NPRM soon (with a final rule expected by early 1988).

January 1, 1986 -- OIRA approves the paperwork revision through December 31, 1986. In its review, the OIRA office consults with DOL and OSHA.

In the approval, Desk Officer Scott Jacobs writes: "The Hazard Communication paperwork package was resubmitted for OIRA review under the Paperwork Reduction Act for two reasons: 1) OSHA wished to add a non-mandatory MSDS (OSHA optional form 174) to the package which would provide guidance to employers required to comply with the standard; 2) OSHA wanted to amend the original paperwork burden to add those hours required to satisfy the trade secrets provisions of the standard.

"The non-mandatory MSDS is now a part of this package, and is explicitly recognized as "guidance" which employers are free to disregard providing they include the revised data elements on their versions of the MSDS. The trade secret paperwork requirements, inadvertently omitted from the original paperwork package, add 165,000 hours to the burden in the Hazard Communication Standard . . . ."

August 26, 1986 -- OSHA submits the paperwork again for revision to "reflect the addition of occupational health nurses to the list of health professionals who may request access to trade secrets in non-emergency situations."

August 28, 1986 -- OIRA approves.

November 11, 1986 -- OSHA requests from OIRA extension of the paperwork's expiration date until March 31, 1987. OIRA approves.

January 6, 1987 -- Representative Joe Gaydos (D-PA) introduces H.R. 162, the "High Risk Occupational Disease Notification and Prevention Act of 1987." Senate Howard Metzenbaum (D-OH) introduces the companion bill, S. 79, in the Senate.

The bill, which would go beyond mere hazard communication, would require the Department of Health and Human Services (HHS) to:

> Determine which substances in the workplace cause disease and illness;
>
> Identify and notify employee populations and individuals found to be at risk; and
>
> Provide medical and support information and services to notified workers.

January 27, 1987 -- United Steelworkers of America, AFL-CIO, and Public Citizen file a "motion for an order enforcing the Court's judgment and holding respondent in civil contempt." They claim that the Court's 1985 order did not authorize OSHA to do more fact gathering; rather, OSHA should have based its feasibility determination on the 1985 rulemaking record. They also argue that even if the Court had allowed more fact gathering, OSHA was moving too slowly.

February 19, 1987 -- OIRA announces that it will hold a public meeting on the paperwork associated with the standard (52 FR 5221).

April 2, 1987 -- OIRA holds public hearing on the paperwork associated with OSHA Hazard Communication Standard.

OIRA Desk Officer Scott Jacobs opens the meeting by describing how OIRA views the Standard. "[T]he standard can't be viewed in isolation," he says. "It's got to be viewed as one very significant component of a whole array of efforts within the federal government and with the state and local governments to improve information on chemical hazards."

He continues: "The challenge, as we see it, is to coordinate these diverse efforts [he specifically mentioned Title III and TSCA] so that they are unified, complementary, and all together create one national system of chemical hazard information. If the array of efforts goes forward piecemeal without proper coordination and management, then we risk ending up with a national program which is inefficient, needlessly costly and perhaps less effective with the accompanying as you folks are well are duplicative and proliferative information and paperwork requirements."

At the hearing, OIRA listens to employers in both manufacturing and non-manufacturing industries. Speakers were: Organization of Resource Counselors, Paperwork Reduction Associates, AFL-CIO, American Petroleum Institute, National Federation of Independent Business, Formaldehyde Institute, National LP-Gas Association, Small Business Administration Advocacy Office, 3M, National Association of Home Builders, Institute of Scrap Iron and Steel (now the Institute of Scrap Recycling Industries), Chlorine Institute, and National Automobile Dealers Association.

NADA's representative, in particular, addresses SARA Title III in his remarks. "We're very concerned about the recently promulgated EPA Title III community right-to-know requirements and how those requirements are going to dovetail with our potential coverage under the OSHA rule," the spokesman said.

The record remains open until April 30.

May 29, 1987 -- The Third Circuit Court holds that its 1985 order requires consideration of the feasibility of an expanded standard without further rulemaking (United Steelworkers of America, AFL-CIO-CLC v. Pendergrass). The Court also holds that OSHA had provided adequate notice to non-manufacturers during the original rulemaking that the standard might eventually apply to them.

June 30, 1987 -- Paperwork associated with the Standard expires.

July 23, 1987 -- The Senate Labor and Human Resources Committee approves S. 79, its version of high risk notification legislation.

August 24, 1987 -- OSHA publishes its final rule (52 FR 31852) and says it will accept "information and any recommendations for further rulemaking within 60 days of the date of publication of this rule."

September 30, 1987 -- OIRA announces (52 FR 36652) it will hold a second public meeting on the paperwork associated with the Standard on October 16 in response to "several letters OIRA has received from the affected public requesting that OIRA conduct a second public hearing. . . ." OIRA received letters from: the National Automobile Dealers Association, National Paint & Coatings Association, Associated Builders and Contractors, Institute of Scrap Recycling Industries, Petroleum Marketers Association of America, Service Station Dealers of America, and Collier, Shannon, Rill & Scott, a law firm representing the National Association of Convenience Stores and Society of Independent Gasoline Marketers of America.

In its letter suggesting that OIRA reconvene the public meeting over the paperwork, the Institute of Scrap Recycling Industries, which submitted extensive comments (40 pages worth) for the last meeting, claims that OSHA "failed to provide adequate comment by affected parties as required by the Administrative Procedure Act."

The public record will close on October 19.

October 8, 1987 -- The Administration voices its opposition to H.R. 162, the High Risk Occupational Hazard Notification and Prevention Act, on the grounds that it would "unnecessarily duplicate current Federal efforts regarding the evaluation and notification of workers of hazards in the workplace."

October 15, 1987 -- The House passes the bill by a vote of 225 to 186.

October 16, 1987 -- OIRA holds a second meeting on paperwork requirements of the Standard. Speakers include 19 trade associations and corporations -- and OMB Watch.

October 16, 1987 -- The Associated Builders and Contractors petitions the U.S. Court of Appeals for the District of Columbia Circuit to issue an emergency stay of the revised Hazard Communication Standard.

Subsequently -- The National Grain and Feed Association, Associated General Contractors, and United Technologies Corp. also file motions against OSHA.

October 23, 1987 -- OIRA approves most of the paperwork (both for the manufacturing and non-manufacturing sector) in the rule -- but only through May 23, 1988. Before then, OSHA must re-enter rulemaking on "at least, alternatives to the [rule's] definition of 'article.'" The rigorous schedule set by OIRA for the rulemaking requires OSHA to issue an NPRM by December 1, 1987, and a final rule by March 1, 1988.

OIRA also categorically disapproves three parts of the rule's paperwork, which had not appeared in earlier versions:

> The requirement for MSDSs on multi-employer work sites, such as construction sites;

Coverage of any consumer products excluded from the definition of "hazardous chemical" in Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA); and

Coverage of any drugs regulated by the Food and Drug Administration.

January 14, 1988 -- Assistant Secretary for Occupational Safety and Health John Pendergrass requests that OIRA grant an extension of the paperwork through the end of September, 1988, writing that "members of [OIRA's] staff have indicated that, except for the three items specifically disapproved . . ., you would agree to extend approval . . . ." Pendergrass says the agency needs more time to consult about new rulemaking with the Advisory Committee on Construction Safety and Health and hold public hearings, if requested, as mandated by the OSH Act.

January 27, 1988 -- The Coalition of Construction Industry Trade Associations petitions OSHA to "stay the effective date of the revised [Standard] at least until a reasonable period of time has elapsed following completion of the additional rulemaking procedures . . . ."

Represented by the law firm of Venable, Baetjer, Howard & Civiletti, the Coalition's members are: the Associated Builders and Contractors, National Association of Home Builders, American Subcontractors Association, American Fire Sprinkler Association, Associated Specialty Contractors, Association of Wall and Ceiling Industries International, Insulation Contractors of America, Mason Contractors Association, Mechanical Contractors Association of America, National Association of Cold Storage Contractors, National Association of Plumbing, Heating, and Cooling Contractors, National Electrical Contractors Association, National Glass Association, National Roofing Contractors Association, National Utility Contractors Association, Painting and Decorating Contractors of America, and Sheet Metal and Air Conditioning Contractors National Association.

Late January and February, 1988 -- Many organizations write to OIRA to express their opinions about the requested extension.

Those writing to oppose the extension include: the Associated General Contractors, National Association of Wholesaler-Distributors, and the Coalition. Organizations writing to support the extension include: the Building and Construction Trade Department (BCTD) of the AFL-CIO, United Steelworkers of America, Working Group on Community Right to Know, and OMB Watch.

February 10, 1988 -- The Steelworkers and BCTD file a motion to transfer all pending litigation involving the Standard to the Third Circuit Court of Appeals. One reason the unions request the transfer is that the Steelworkers plan to contest in the Third Circuit the actions of OMB and its review under the Paperwork Reduction Act of the information collection requirements contained in the Standard.

February 23, 1988 -- The BCTD files its opposition to the Coalition's petition of OSHA to stay the Standard. BCTD says that it would view any delay in implementing the rule as "directly contrary to the Third Circuit's order in United Steelworkers of America v. Pendergrass." In addition, the union characterizes OMB's interference as exceeding its statutory authority.

Early March, 1988 -- OSHA sends a new draft NPRM for the Hazard Communication Standard to OMB for review under Executive Order 12291. The new NPRM states OSHA's belief that the rulemaking record to date still substantially justifies the agency's previous regulatory choices.

March 2, 1988 -- OSHA requests a three-year extension for the parts of the rule not involved in OIRA's October disapproval.

March 29, 1988 -- The Senate votes down S. 79, the high risk notification legislation by a vote of 52-42.

March 30, 1988 -- OSHA's Advisory Committee on Construction Safety and Health meets in Washington, D.C. The group briefly discusses the Standard, mostly noting that the committee has already devoted an entire meeting to the Standard and voted unanimously for a separate standard to cover construction. Committee members say, however, that they don't "want the general protections removed while . . . waiting for a separate standard." Because the Senate has defeated the high risk notification bill, committee members note that "it makes it imperative that there be a very good Hazard Communication Standard."

Committee members also complain that there is "no need [for OSHA] to use the committee to delay the Standard further" and that the agency "should move forward with no additional advice" from it.

April 6, 1988 -- The Steelworkers and Public Citizen file a motion asking the Third Circuit Court to order further compliance with the Court's previous judgments about OSHA's implementation of the Hazard Communication Standard. The motion also requests that the Court add OMB Director James C. Miller III as a respondent.

In the motion, one of the few ever to challenge OIRA's paperwork review power, the Steelworkers and Public Citizen argue that Miller acted in contempt of court when his agency's Office of Information and Regulatory Affairs tried to prevent OSHA from finalizing the Standard. The motion also argues that in reviewing the Standard's paperwork, OIRA exceeded its statutory authority because the Standard requires employers to provide information to workers, not the government. As a result, they argue, the Paperwork Reduction Act does not apply.

April 13, 1988 -- OMB extends approval for the parts of the rule not disapproved in October through April 30, 1991.

April 18, 1988 -- The Coalition and the Associated Builders and Contractors file a motion in the U.S. Court of Appeals for the District of Columbia Circuit for an emergency stay of OSHA's revised Hazard Communication Standard -- at least with regard to the construction industry.

April 26, 1988 -- OSHA and the Justice Department, which asks to respond because a significant part of the suit addresses issues outside of OSHA's scope, file a response opposing the Steelworkers' and Public Citizen's petition. The main points of the government's response are that: 1) regulations implementing the Paperwork Reduction Act include regulatory information collection requirements in the definition of "paperwork" and were written with this type of situation in mind and 2) if OSHA had published the final Standard without the three parts, it wouldn't have been in contempt of court -- so why should the disapproval of the three provisions now constitute contempt?

April 27, 1988 -- OSHA publishes a notice in the Federal Register of OMB's decision (53 FR 15033).

May 6, 1988 -- The Steelworkers and BCTD file a reply in further support of their motion for further relief and to the opposition filed to their petition.

May 20, 1988 -- The Court of Appeals for the District of Columbia orders an administrative stay of the Standard "until the Third Circuit rules on the emergency motion for stay." The D.C. Court orders all the proceedings transferred involving the Standard to the Third Circuit.

June 24, 1988 -- The U.S. Court of Appeals for the Third Circuit upholds the administrative stay. In its order, the Court sets the following schedule: 1) By July 8, the ABC would file an expanded version of its arguments for a stay and 2) by July 22, the Steelworkers and BCTD would file their response. The court tentatively sets oral arguments for late August, 1988.

August 8, 1988 -- OSHA issues another NPRM for the Hazard Communication Standard (53 FR 29822) to "propose modifications to the final rule based on information submitted to the rulemaking record, including a determination made by the Office of Management and Budget (OMB) under the

Paperwork Reduction Act regarding the information collection requirements of the final rule."

August 19, 1988 -- The U.S. Court of Appeals for the Third Circuit rules that OMB exceeded its authority under the Paperwork Reduction Act when it disapproved the disputed three parts of the standard. The order is the third since 1985 attempting to force OSHA to apply the standard to the non-manufacturing sector.

The Court rules that the standard does not involve the collection of information subject to review under the Paperwork Reduction Act, but rather the substance of agency decision making, which is OSHA's responsibility, not OIRA's. In its decision, that Court states: "Nothing in the Paperwork Reduction Act suggests a congressional intention to allow OMB, in the guise of regulating collection of information, the authority to second guess other federal agencies with respect to the kinds of disclosure needed to accomplish substantive policies entrusted to such agencies." (United Steelworkers of America, et. al., v. John A. Pendergrass, et. al., p. 13)

September 2, 1988 -- The Third Circuit's order is stayed in response to a Department of Justice request for an en banc hearing of the case. Justice argues that the court ignored the meaning of the Paperwork Reduction Act and its legislative history when it struck down OIRA's review.

September 22, 1988 -- OSHA belatedly submits the paperwork contained in the new NPRM to OMB for review under the Paperwork Reduction Act.

September 28, 1988 -- The House Committee on Small Business's Subcommittee on Exports, Tourism, and Special Problems holds a hearing on the effect of the standard on small businesses in non-manufacturing industries. The hearing gives business, as well as members of the construction industry, another forum for airing their complaints about the standard.

November 19, 1988 -- OIRA disapproves the standard's paperwork again, this time over the telephone to a Department of Labor official on a Saturday. OIRA makes no comment for its decision, except to say that the disapproval is for technical reasons.

November 25 and 28, 1988 -- The Third Circuit issues two opinions upholding the standard. First, the Court denies the construction industry's stay for a petition on construction sites. Second, the Court denies the Justice Department's petition for an en banc hearing.

December 2, 1988 -- The Department of Labor petitions for a stay of the standard until January 5, 1989, to give the

Solicitor General enough time to decide whether to seek Supreme Court review of the case.

Week of December 6, 1988 -- OSHA holds another series of public hearings on the standard, its scope, and its status at OIRA.

December 28, 1988 -- The construction industry files a motion to stay the standard, as well as request for Supreme Court review of the case.

January 14, 1989 -- The Supreme Court issues a stay of the standard, pending review of the petitions received.

January 24, 1989 -- The Supreme Court lifts its stay.

January 30, 1989 -- The standard goes into effect in the construction industry.

February 15, 1989 -- OSHA publishes a notice in the Federal Register (54 FR 6886) to notify the public that all of the standard's provisions are in effect in all segments of industry.

May 15, 1989 -- The Supreme Court agrees to review the case.

Testimony of Gary D. Bass, Ph.D.
Attachment C

## OIRA'S CONTROL OF FEDERAL PAPERWORK (THROUGH THE PAPERWORK REDUCTION ACT)

## CHRONOLOGY OF THE DRESS REHEARSAL FOR THE DECENNIAL CENSUS

1984 -- A Federal Advisory Commission forms for the 1990 Census. OIRA statistician Maria Gonzalez leads it.

June 17, 1987 -- The Bureau of the Census, part of the Department of Commerce, submits the proposed "Dress Rehearsal" for the 1990 Census to OIRA for review under the Paperwork Reduction Act. The "Dress Rehearsal" is the last test run -- of questions, sampling methods, and so forth -- before the 1990 Census.

Late July, 1987 -- In a meeting, OIRA officials raise questions about nearly one third of the questions on the Dress Rehearsal. OIRA's questions are widely regarded as mandates for changes and deletions.

August 7, 1987 -- The Joint Economic Committee (JEC) holds a hearing to look into OIRA's role in shaping the Dress Rehearsal. Then-OIRA Administrator Wendy Gramm testifies that her office had only "suggested" cutting questions from the form. "No OMB position was stated and no decisions were, or have yet been made," she tells the committee.

JEC Chairman Senator Paul Sarbanes (D-MD) expresses his opinion about OIRA's actions: "OMB has been involved . . . for three years to shape the content of the 1990 Census. OMB has reviewed pretesting as the process moved along. Now, at the eleventh hour, . . . OMB has raised with the Census Bureau an extensive series of questions about a large part of the survey. It leads one to wonder what has been going on."

August 25, 1987 -- For the first time, OIRA publishes a notice of the status of its review in the Federal Register. In the notice, OIRA says it will accept public comments on the Dress Rehearsal until September 15. OIRA has never before set a defined public comment period on a paperwork proposal.

September 15, 1987 -- OIRA officially disapproves the Census Dress Rehearsal as proposed. OIRA receives more than 1,000 public comments, of which only a handful support its position.

September 16, 1987 -- In a letter to Census Bureau officials, Gramm explains her office's rationale: "The questionnaires and sampling design . . . do not meet the criteria of practical utility and minimization of burden established by the [Paperwork Reduction] Act." To help design a questionnaire that would meet those criteria, Gramm instructs the Bureau to:

- Delete three fuel and utility use and cost questions;
- Remove seven housing questions from the short form (which goes to all households), while retaining them on the long form (which goes to a sample of household); and
- Use a variable sampling method, sampling more in rural areas and less in urban areas, and reducing the entire sample size from 16 million to 10 million.

September 22, 1987 -- Census submits its revised questionnaires to OIRA for review under the Paperwork Reduction Act, asking the office for a response by September 28.

Late September, 1987 -- The Department of Housing and Urban Development (HUD) protests to OIRA about the removal of the fuel and utility use and cost questions.

October 15, 1987 -- OIRA approves the Census Dress Rehearsal short form, with the deletions it suggested in September.

October 28, 1987 -- OIRA approves the Census Dress Rehearsal long form. Gramm offers a compromise in her letter informing Census officials of her decision. She says the Bureau can go ahead and collect fuel and utility use and cost data but only from renters (not from home or condominium owners) and only information about what utilities (gas, electric, heat, etc.) are included in their rent (yes/no/I don't know). The bureau will have to impute dollar amounts from the answers received.

Gramm's letter, however, does not resolve the sampling methodology issue.

February 24, 1988 -- The House Select Committee on Aging and its Subcommittee on Housing and Consumer Affairs holds a hearing, "The 1990 Census: Can We Count on It?," to look into the changes OIRA made to the Dress Rehearsal forms. Committee chairman Edward Roybal (D-CA) charges that the changes OIRA made "threaten to cripple the ability of local officials, planners, administrators, and businesses to plan for the housing needs of small population groups, such as the elderly, the poor, minorities, the disabled, and the farm population throughout the next decade."

In their testimony, OIRA officials mistakenly identify the Decennial Census as the "largest paperwork burden on the American people" and rationalize their work on the Dress Rehearsal this way: "Increasingly, we're seeing a resistance on the part of the public to complete long, detailed questionnaires." At the hearing, OIRA officials also admit that they held no public hearings on the matter because they weren't "sure anyone wanted to meet with us."

Late February, 1988 -- Gramm, appearing on a CNN show about OMB's powers, presents the work OIRA did on the Census Dress Rehearsal as an example of how well the paperwork review process works.

March 15, 1988 -- A group of 28 Representatives and Senators of both parties sign a letter to President Ronald Reagan urging that the 1990 Census questionnaire should "reflect fully the best professional judgment of the Census Bureau" and expressing concern that it would "be seriously weakened if it incorporate[d] the significant revisions which the [OMB] has directed the Census Bureau to make."

March 31, 1988 -- The Census Bureau issues a press release announcing that it has reached an agreement with OIRA "on the number of households to be sampled in the 1990 census and on which questions to ask on the census forms." Under the agreement, the sample size for the long form will be 17.7 million households, with sampling rates varying depending on population density and geographic area.

April 14, 1988 -- The House Subcommittee on Census and Population holds a hearing to review the 1990 Census questionnaire.

June 28, 1988 -- The Census Bureau submits the forms for the 1990 Census to OIRA for review under the Paperwork Reduction Act.

July 27, 1988 -- OIRA approves the forms for the 1990 Census.

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Testimony of

David D. Doniger
Senior Attorney
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on

# Reforming the Office of Management and Budget's Regulatory Review Process

before the

Subcommittee on Government Information and Regulation
Committee on Government Affairs
United States Senate

June 16, 1989

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Mr. Chairman, Members of the Subcommittee, my name is David Doniger. I am a senior attorney for the Natural Resources Defense Council, a national organization with more than 100,000 members committed to protection of public health and the natural environment. Thank you for the opportunity to testify today.

NRDC's staff of attorneys and scientists is committed to securing the faithful execution of the nation's landmark health and environmental protection laws by the Environmental Protection Agency and other federal departments and agencies. For more than eight years, however, we have seen the faithful execution of these laws repeatedly frustrated by the "regulatory review" process conducted by the Office of Management and Budget (OMB).

Thanks to the investigatory efforts of congressional committees and others, there is now an extensive and well-documented record of the pernicious effects of the regulatory review process conducted by OMB. That process cries out for basic legislative reform. The time for reform is now, during reauthorization of the Paperwork Reduction Act.

OMB's Office of Information and Regulatory Affairs has developed into a centralized, secretive, and powerful institution staffed by officials, both appointed and career, who are deeply hostile to the health and environmental protection laws Congress has assigned to agencies like the EPA. Through two executive orders and portions of the Paperwork Reduction Act, and through its collateral power over agency budgets, OMB exercises unwarranted control over the decisions of EPA and other agencies.

The power of the OMB comes directly at the expense of Congress. Those in OMB who are hostile to the purposes of the nation's health and environmental laws cannot win in open legislative combat over the merits of those laws. Yet they are able to slow down or block the implementation of those laws through the clearances imposed in the regulatory review process and their collateral power over agencies' budgets.

Congress attempted to entrust the execution of these laws to agencies headed by publicly accountable officers and staffed by scientific and technical experts. Congress counted on their acting on the basis of the scientific and technical evidence and the public input they receive through legitimate rulemaking channels. Congress counted on having effective means of oversight of these agencies and their activities. Instead, Congress now finds that the real authority is frequently exercised by an institution operating in secret essentially without any congressional or public control.

OMB officials disingenuously state that, formally, they cannot directly make decisions or dictate decisions to the heads of agencies. But they have constructed highly effective ways of indirectly and secretly working their will. In all, under the executive orders and the Paperwork Reduction Act EPA and other agencies can be required to obtain five separate clearances from OMB in order to issue a regulation: One to collect information essential to determining the dimensions of a health or environmental hazard, a second to begin development of a rule, a third before it is proposed, a fourth before it is promulgated, and a fifth in connection with record-keeping and reporting requirements needed for compliance.

What's more, there are no effective limitations on how long OMB can hold a rule hostage by withholding clearances. Under Executive Order 12291, for example, there is no time limit preventing OMB from indefinitely extending its review of a proposed or final regulation, merely by a telephone call to the affected agency. The power of indefinite delay effectively gives OMB a veto power through which it can extract the substantive changes it desires.

Most important, however, is OMB's collateral authority over an agency's budget (plus its powers to clear legislative proposals and testimony). The express or implied threat of budgetary retribution effectively increases the leverage of OMB in arguments over a regulation. In the oft-quoted words of Jim Tozzi, a former deputy director of OMB's Office of Information and Regulatory Affairs: "The government works using three things: money, people, and regulations; the agency must get all three from OMB."[1]

Technically, the head of an agency can appeal to the President to overrule OMB objections and order a rule cleared. Other tools to influence the outcome of a conflict with OMB exist as well, such as making information available to Congress or the public. But agencies will rarely take recourse to these formal or informal means of fighting OMB. The reason is that considering OMB's other powers, it is simply too expensive. As former OMB director James C. Miller, III, put it: "If you're the toughest kid on the block, most kids won't pick a fight with you. The executive order establishes things quite clearly."[2]

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[1] Olson, "The Quiet Shift of Power: Office of Management and Budget Supervision of EPA Rulemaking Under Executive Order 12,291," 4 Virginia Journal of Natural Resources Law 1, 6 (1984).

The result of this process, documented in repeated congressional committee investigations and elsewhere, has been numerous clear instances of long delays in issuing health and environmental protection regulations and substantive changes in the outcome of those regulations. Many regulations have been altogether blocked. Others have been sprung loose long after statutory deadlines only after lawsuits by organizations like mine.

People have died as a result of the delays and substantive changes caused by OMB. People continue to die today because of these actions.

Let me give just one example of OMB's past and recent abuses this morning. This is the familiar subject of asbestos.

OMB's repeated interference with EPA's effort to ban the manufacture and use of asbestos, a known cause of cancer, is the best documented and longest-running abuse in the EPA arena. OMB is responsible for years of delay in action that would save thousands of American lives.

In 1984 (already five years after initiating development of a rule), EPA sent to OMB proposed regulations to prohibit manufacture and use of certain categories of asbestos, and to phase out remaining production and use over 10 years. OMB held repeated, secret meetings with industry. OMB held up the proposed rules for more than six months arguing, among other things, that cancer deaths in the future should be "discounted" and considered to be worth as little as $22,094.93 today. OMB ultimately refused to approve the rules and pressured EPA to drop the effort and leave asbestos control to speculative future action by OSHA and other agencies.

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[2] Regulation (March/April 1981), p. 19.

In February 1985, EPA caved in. Later, in the face of a congressional investigation and public outrage, EPA reversed course.[3] In January 1986 -- 18 months after first submitting them to OMB -- EPA published its proposals.

But they still are not in effect. OMB held up clearance of the final asbestos ban and phasedown rules until just two days ago. We do not yet know what changes OMB may have exacted from EPA as the price of clearance. The fact remains, however, that the final rules were bottled up at OMB for six full months. It has been five years since EPA had asbestos ban and phasedown rules ready for proposal. OMB bears the responsibility for utterly outrageous health threat to continue unabated.

Less easy to document, but no less real, are additional costs: Government money is wasted as agencies are forced to devote more staff time and budget to each regulation in order to satisfy the paperwork demands of the OMB review process. Other needed actions to protect public health and the environment are not taken, either because the necessary resources were eaten up clearing OMB hurdles in prior matters or -- more perniciously -- because agency staff give up trying to take actions which they believe OMB will block.

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[3] See "EPA's Asbestos Regulations: Report on a Case Study on OMB Interference in Agency Rulemaking," House Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, Comm. Print 99-V, 99th Cong., 1st Sess. (1985).

The secrecy of OMB regulatory review also makes a mockery of the rights and protections which are supposed to be afforded to the public by the Administrative Procedure Act's requirements for an open, fair rulemaking process. Modern administrative law sets a high premium on open procedures through which the facts and views on which an agency acts are developed on a record in an open rulemaking process. Yet OMB personnel routinely bring their views to bear -- or, even worse, act as a conduit for the views of industries which oppose regulations -- without leaving any public trace. As former OMB official Jim Tozzi has stated, OMB tries not to "leave fingerprints."[4] This takes place even under the Clean Air Act, which is one of the few statutes that expressly requires the public docketing of EPA submissions to OMB and OMB's comments back. OMB officials simply substitute undocumented telephone calls and meetings for written materials. What's more, OMB influence most often comes to bear either before the procedural requirements of the APA kick in (before proposal) or after the close of the public comment period.

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[4] Washington Post, July 10, 1981, p. A21.

As if the present array of OMB powers were insufficient, it now appears that a group of uncertain composition headed by the same Jim Tozzi is proposing yet a new executive order further extending OMB's reach into the proper sphere of EPA and other health and safety agencies. As reported in the June 9, 1989, issue of Inside EPA (attached), on behalf of a group known as "Federal Focus," Mr. Tozzi has proposed a new executive order specifying new procedures for the conduct of risk assessments for chemicals that can cause cancer and other serious illnesses. The new order's stated objective is to force EPA and other agencies to reduce their estimates of health risk. The order apparently would bar EPA from considering the danger to the most sensitive and most heavily exposed members of the public, forcing instead a misleading focus on so-called "average" risk. In addition, the order apparently would require EPA and other agencies to dismiss as "de minimis" or "insignificant" risk levels which are orders of magnitude higher than the levels those agencies traditionally have considered worthy of protective regulation.

What greater OMB intrusion could there be into the duties and prerogatives of EPA and similar agencies operating under the health-protection laws Congress has enacted? Those laws order the regulatory agencies to take a precautionary, "better-safe-than-sorry" approach in risk assessment. Those laws emphasize protection of the most vulnerable segments of society. Mr. Tozzi's proposed order would simply cancel those laws.

Previous executive branch efforts to manipulate risk assessment procedures were rejected by the scientific community. During the first term of the Reagan Administration, the Office of Science and Technology Policy (with OMB hovering in the background) attempted to rewrite federal guidelines for identifying chemicals as carcinogens. OSTP tried to introduce, for example, the concept that threshold doses could then be reliably established for some carcinogens. This idea was soundly rejected by a broad array of leading cancer scientists, and OSTP ultimately backed down. This new attempt to manipulate scientific guidelines deserves a quick coup-de-grace.

Mr. Chairman, it is not enough, however, just to block further aggrandizement by OMB. I urge you and your colleagues to end OMB's current conduct of regulatory review as a secret exercise in hostage taking and extortion. The most elementary reforms needed are to place regulatory reviewers under basic obligations to publicly and contemporaneously document their facts and arguments, as well as their contacts with agency officials and industry representatives. Three additional reforms are even more important in order to prohibit OMB from exercising a practical veto over regulatory agencies. First, Congress must limit regulatory reviewers to one bite at the apple -- one opportunity to press their views -- not the five sequential and secret clearances that OMB now enjoys. Second, Congress must establish strict and non-extendable time limits for that one bite at the apple, which should be limited to the public comment period following a proposal. Third, and most important, Congress must divorce regulatory review from OMB's collateral power over agency's budgets and make such review proceed on the strength of argument rather than on the basis of extortion and retribution. The only way to do this is to remove the regulatory review function from OMB.

Even accepting for the sake of argument that there is a case to be made for an executive branch or interagency process, it should be one of open comment on an agency's proposed rules in order to improve their factual basis or to uncover possible policy conflicts. When disputes arise, however, it should be the regulatory reviewer's responsibility to raise the matter higher, e.g., for Cabinet-level or Presidential resolution. It should not be in the reviewer's power to block action indefinitely and force duly appointed and confirmed agency heads either to appeal over their heads or pain of budgetary retribution, or simply to cave in.

Defenders of the current OMB process invoke arguments that the President needs a means of "coordinating" the action of individual agencies and preventing them from acting contrary to supposed "Administration policy." Without conceding the constitutional objections to the process which have been raised by Congress and members of the public, it should be obvious that the cited presidential interests in policy coordination do not extend to violating the mandates of congressionally-enacted and presidentially-signed statutes. That is the antithesis of the

President's duty to take care that the laws are faithfully executed. Likewise, it should be obvious that the present OMB review process, cloaked in secrecy, loaded with repeated clearance and veto opportunities, free of deadlines, and linked to budgetary retribution goes beyond the stated rationale for coordination.

The President has ample other tools for effectively coordinating policy within his Administration. OMB and other agencies can use the opportunity to make comments directly to agencies in rulemakings, to raise issues before such forums as the Domestic Policy Council or the Cabinet, or to the President himself. But neither OMB nor any other executive branch agency should have the power to veto regulations, in secret, as OMB can do now.

Mr. Chairman, the Paperwork Reduction Act is the only even tangential authority for a portion of the OMB regulatory review process. The rest stems from the executive orders and OMB's extensions thereon. In the amendments to this law, Congress can curb these usurpations of power and restore the openness and responsiveness of the regulatory agencies to the mandates contained in the laws Congress has assigned them. So I urge you to include reforms necessary to end the secrecy, hostage taking, and extortion inherent in the current OMB regulatory review process in the amendments to the Paperwork Production Act that you write this year.

I would be happy to answer any questions that you may have.

## GROUP FLOATS DRAFT ORDER THAT COULD SCALE BACK EPA RISK ASSESSMENTS

A group headed by a former OMB official has floated a novel draft executive order which could result in much less conservative EPA risk assessments by focusing more on risks posed to the average individual instead of the worst case scenario, according to agency sources. Some EPA sources are concerned that the move coincides with an OMB attempt to bring the agency's risk range of allowable chemical exposure in line with less stringent numbers adhered to by other agencies. The draft will serve as a focal point for discussion at a risk assessment forum sponsored by the group Federal Focus, which calls itself a "non-profit organization dedicated to the discussion of policy issues." The executive order, which sources say is the first of its kind on risk assessment, was drawn up by the Washington, D.C. consulting group Multinational Business Services, Inc., which along with Federal Focus is headed by former OMB official Jim Tozzi.

Sources for Federal Focus say they will sponsor three forums: one for federal employees, one for public interest groups and one for industry. The first meeting, to be held June 20, will be moderated by Paul Rogers, former House Energy & Commerce health & the environment subcommittee chairman and partner with the Washington, D.C. law firm Hogan & Hartson.

Federal Focus officials say that risk assessment is a controversial interagency issue ripe for extensive discussion. "There has been infighting over the science and how to take care of the problem," says one source who sees discussion over an executive order as a possible way to solve problems plaguing the process and achieve interagency consistency. EPA has been waging its own war with other agencies, especially OMB, which has criticized the agency's range of allowable exposure used in crafting cleanup standards, arguing that it is overly protective and conflicts with other agencies. And a Federal Focus source says some agencies are "choosing a more prudent approach to be on the safe side."

According to a letter sent to the participants, the group plans to explore: a clearer explanation of uncertainties in the risk assessment process and greater consistency among federal agencies and "more realism and less emphasis on 'worst case probabilities.'" The draft risk assessment, *obtained by Inside EPA*, would be binding on all federal agencies. It cites as a "fundamental principle" that consistency should be achieved "to the maximum extent possible" in risk management decisions among federal agencies, in particular where an agency regulates a substance or activity regulated by another agency; that risks communicate harm posed to the "average individual"; that risk management decisions be based primarily on data assessing actual, as opposed to "hypothetical" potential risk. The order also asks that regulation of de minimis risks, those "insignificant in relation to the ordinary day-to-day risks faced by the average individual," be avoided.

The draft states that risk management decisions should take into account "allocation of scarce societal resources" that may be needed to mitigate other environmental health risks. The document asks federal agencies to first provide: an estimate of risk for the average individual as well as sensitive populations and highly exposed individuals and an estimate of the most likely risk to the entire exposed population as well as the sensitive or highly exposed population and the worst case scenario for each circumstance. Agencies should include an explanation of risks that could be increased through regulation of the substance by substitution products, for example.

**The executive order "is not something I'm sympathetic to,"** says one EPA source. This source, who read the order, argues that its call for consistency implies that EPA's risk range is too conservative. "It strikes me as a move to a less conservative risk range." Many of those invited to participate in the forum have taken a "wait and see" approach. "I'm going out of curiosity," says one. Another believes that a risk assessment binding on all agencies will be difficult to follow, given the varying mandates of different federal agencies.

**"This is the feedback we're looking for,"** says one source for Federal Focus. This source denies any intent to make risk ranges less conservative, and argues that the executive order will serve only as a starting point for discussions. In particular, this source says that the forum will focus on the presentation of risk numbers. EPA has tended to emphasize the "worst case scenario" when deciding when to regulate, says the source, who believes it is necessary to communicate to the public the nature of the assumptions "to regulate in a more balanced way." The forum will seek to examine "whether we need to make changes in how data is presented" and question how risk assessment researchers communicate information to regulators.

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STATEMENT OF

JAMES L. MARTIN

on behalf of the

NATIONAL GOVERNORS' ASSOCIATION

before the

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION
COMMITTEE ON GOVERNMENT AFFAIRS
UNITED STATES SENATE

on

REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT

June 16, 1989

Good morning, Mr. Chairman and members of the subcommittee. I am James L. Martin, legislative counsel for the National Governors' Association. Mr. Chairman, I have held this position for the past twenty-two years and as such, I have seen many approaches to paperwork reduction. I hope my comments this morning are useful to you and the committee.

NGA was an early and strong supporter of the Paperwork Reduction Act in 1980. This proposal was strongly supported by President Carter and passed the House by a vote of 328-13. Many of the provisions were recommendations of the Federal Paperwork Commission under the leadership of Representative Frank Horton.

I have three general points this morning:

1. NGA strongly supported the original Paperwork Reduction Act as an essential tool to improve federal-state-local relations.
2. The Paperwork Reduction Act works. It is very useful to state government in highlighting inconsistent and overlapping federal agency regulations, including OMB regulations.
3. NGA strongly supports reauthorization of the Paperwork Reduction Act. We would like you to add an explicit directive to OMB and the federal agencies that a high priority of Congress is to let state governments carry out federal programs by using their own practices where these are equal to or exceed federal standards. This would result in a significant reduction in costly federal regulations that duplicate more effective local decisions.

1. NGA strongly supported the original Paperwork Reduction Act. NGA supported the Paperwork Reduction Act as one more way to rationalize the vast network of federal-state-local relationships. Other efforts included creation of the Advisory Commission on Intergovernmental Relations, the Intergovernmental Cooperation Act, and the Intergovernmental Personnel Act, all led by Senator Edmund Muskie of Maine and Representative L.H. Fountain of North Carolina.

Efforts to create block grants are, in essence, steps toward federal paperwork reduction. This was a primary result of the Model Cities Act, the Land and Water Conservation Fund, General Revenue Sharing, and the Small Cities Block Grant. In fact, General Revenue Sharing had a federal administrative cost rate of one-half of 1 percent -- the best record of any program to date.

One rough measure of the need for paperwork reduction is a look at the *Federal Register*. Some interest groups think there should be more regulation for their priority issues and less for others, but in total, the potential expansion of regulations and paperwork is limitless. NGA feels that EPA should spend less time micromanaging state and local decisions by constantly revising and second guessing us through the permit process. We think EPA should spend more time publishing minimum national standards for air toxics. Since 1977, EPA has only developed seven standards from a list of 180. EPA should do the federal job and leave the state and local job to us. NGA believes that a constant effort is necessary to prevent the seemingly endless expansion of regulation. What is essential can be summarized and simplified. Most important, federal agencies should rely on state laws and procedures to carry out federal programs, rather than devising costly new regulations just to meet their own administrative needs.

Pages in the Federal Register

| | Presidential | Rules | Proposed Rules | Notices | Blank Pages | Total |
|---|---|---|---|---|---|---|
| 1979 | 729 | 19,366 | 18,091 | 33,005 | 6,307 | 77,498 |
| 1980 | 604 | 21,092 | 16,276 | 35,286 | 13,754 | 87,012 |
| 1981 | 306 | 15,300 | 10,433 | 31,697 | 5,818 | 63,554 |
| 1982 | 320 | 15,222 | 12,130 | 25,432 | 5,390 | 58,494 |
| 1988 | 768 | 16,042 | 13,883 | 19,672 | 2,760 | 53,376 |

2. The Paperwork Reduction Act works. The Small Cities Block Grant is an excellent example of how OMB's Office of Information and Regulatory Affairs used the Paperwork Reduction Act to make this one of the smoothest operating state-local programs on the books. One reason is that OMB, in support of NGA's claims of excessive paperwork, objected to HUD's proposed forty pages of regulations. The result was less than ten pages of regulations. We now use state laws and procedures, not HUD's, to run the program. Local governments and citizens do not need two sets of regulations -- one federal and one state. They only need the one they are used to -- the state's! Local officials like this state-run program.

OMB greatly assisted all parties in implementation of the Uniform Relocation Assistance Act last year. Thirteen separate regulations were combined into a uniform set of regulations with the Department of Transportation assigned a lead agency role. States can be certified to entirely carry out the act with little or no federal paperwork and interference. This act is now working better than anytime in its fourteen-year history.

The Paperwork Reduction Act was a great help in NGA's efforts to simplify and standardize scores of federal regulations. In 1988, Governors from forty states submitted nearly 400 proposals for regulatory reform and paperwork reduction. Of these, 103 were submitted to President Reagan for action. NGA's efforts for paperwork reduction had six goals:

1. Make federal programs more humane.
2. Eliminate duplicative and conflicting regulations for the same client or issue.
3. Rely on state laws and procedures to manage federal programs.
4. Speed-up the federal response to program management.
5. Bring the federal programs up to speed with the states or the need.
6. Stop unnecessary micromanagement of state and local affairs.

A closer look at a few of these problems clearly documents the need for the Paperwork Reduction Act.

Make federal programs more humane. For example, the Department of Health and Human Services and the Department of Agriculture have separate regulations to determine the value of a vehicle for a welfare client. Five different vehicle rules were proposed for standardization, simplification, and realistic conditions. The same approach applies to separate agency regulations for funeral expenses. Confusion by client or case workers over these issues are absolutely unnecessary, especially at a time of bereavement.

Occasionally, a welfare client receives an unexpected lump sum payment of cash, but regulations prevent the use of these funds for job training and education, medical and legal bills, essential household needs, and furnishings. The regulations mandate benefit reductions and remove any humane use of unexpected funds.

Foster care regulations prohibited the use of federal funds by sixteen-year-old foster children to prepare them for independent living skills. We found this was a congressional mandate, so last year Congress fixed the problem. This is an important point. When agencies and OMB exceed their authority, we can come to Congress for correction. This is not possible on over 100 regulatory issues a year. Therefore, we need OMB to help resolve agency conflicts and duplications that result in confusion to those in need and a diversion of scarce state resources to cope with a federally created bureaucracy.

Eliminate duplicative and conflicting regulations for the same client or issue. There are more than seventeen different AFDC and Food Stamp regulations dealing with the same client and same issue. These include procedural conflicts that greatly distract case workers from meaningful assistance and lead to endless paperwork and administrative duties to avoid errors. More than forty-six states have been found to have unacceptable error rates -- many of which come from regulatory confusion. The Governors believe a law is faulty when nearly every state fails to comply. We are trying to fix this problem this week in the House Ways and Means Committee as a part of the reconciliation bill.

Employment, training, and education assistance provide vital, positive help to welfare clients, but the rules and regulations for each agency for the same client are different. Authority for state flexibility is now critical to make these programs efficient and productive for the clients, and some will require legislative action. The new welfare reform bill responds to this need by giving states flexibility in this area. NGA will use the Paperwork Reduction Act to ensure that OMB and agency regulations support the will of Congress as regulations are drafted.

This means that the Paperwork Reduction Act is not tilted in OMB's favor. If OMB or the agencies re-regulate welfare reform with detailed program requirements, it will kill this vital new effort to meet the needs of the poor. NGA will go directly to the President to make our case if needed, and ultimately back to Congress, if necessary, to ensure this program is allowed to work as Congress expected. OMB is not immune from the public's knewlege of their actions.

Recently OMB issued a proposed change in management Circular A-87 dealing with cost allocation procedures. We proved that it would result in a massive increase in paperwork required by OMB. Nearly all state and local organizations joined us in opposition of these proposed changes by OMB.

3. NGA strongly supports reauthorization of the Paperwork Reduction Act. NGA strongly supports reauthorization of the act because we believe it works. The act is now being used to ensure that new or old regulations must:

- be necessary for the performance of law;
- have practical utility;
- not duplicate existing information; and
- not impose an undue burden on the public.

NGA asks the committee to support a fifth criteria: utilize state laws and procedures to carry out the law. When Congress sets a ceiling on state administrative costs, as in the Job Training Partnership Act program, we do not think any administrative regulations are necessary. This principle can be applied to most federal grants. We know of no state that receives sufficient administrative funds to cover their costs when limits are fixed by law. States always exceed the limit with direct expenditures — so why waste federal and/or state funds on paperwork requirements that have no benefit?

Most agree that "the good-time Charlies" of state government are gone. State governments today have financial, administrative, and management practices as sophisticated as most of the governments in the world. In most cases, state government is the biggest business in the state. In 1987, state government revenues from their own sources exceeded $420 billion -- not including any federal assistance. In 1987, states gave their cities and counties $58 billion in state aid, while the federal government gave cities and counties just $12 billion. The states also have sophisticated management and financial practices to account for these billions of taxpayers' dollars. Governors believe that the federal government should rely on these same state procedures for the management of federal grant funds, rather than creating separate, duplicative, unnecessary, and costly federal requirements for federal funds. Why should states have to hire private contractors to comply with federal management circulars, while they handle billions of their own funds for the same purpose, and, in many cases, audit the funds of local governments? Equivalent state procedures can and should be certified for federal grant management and cost allocation procedures. This would save millions in staff time and allow the intergovernmental system to work better in serving the people.

The economies of state governments are bigger than those of many foreign nations, and state standards for public safety and health are some of the best in the world. Of the top twenty-five economies in the world, ten are American states; of the top fifty economies, twenty-three are American states. Vermont, the smallest state economy, is larger than 112 member countries of the United Nations. Despite the size and sophistication of state governments, congressional committees and counterpart executive agencies still write overlapping laws and regulations for the states covering everything from two separate laws and regulations dealing with funeral expenses and three dealing with the market value of a car owned by a mother on public assistance. Governors believe Congress should give states flexibility to manage many of these issues. When you do, we need laws like the Paperwork Reduction Act to make the regulations match the law.

Thank you for this opportunity to speak to you about paperwork reduction and to appear in support of reauthorization of the Paperwork Reduction Act.

Testimony of Mark E. Richardson
Executive Director
Business Council on the Reduction of Paperwork (BCORP)

before the
Subcommittee on Government Information and Regulation
Committee on Governmental Affairs
U.S. Senate

June 16, 1989

The Business Council on the Reduction of Paperwork (BCORP) is grateful for the Committee's invitation to comment on the reauthorization of appropriations for the Office of Information and Regulatory Affairs. We further welcome the opportunity to work with this Committee and you, Mr. Chairman, to recommend amendments to the Paperwork Reduction Act and suggest areas of needed oversight attention.

## Background and General Statement

For some 47 years the Council has been monitoring and participating in activities associated with implementing the Federal Reports Act and its successors, the 1980 Paperwork Reduction Act, and the 1986 Reauthorization Act. We started in 1942 at President Roosevelt's request, as the Advisory Committee on Government Questionnaires.

We were involved in the 1973 amendments to the Federal Reports Act, which engaged the Comptroller General in clearing the regulatory requirements of the independent regulatory agencies, as well as in the 1974 creation of the Commission on Federal Paperwork, its work, and the framing of the 1980 Act. And we were proud participants in President Carter's signing ceremony of the 1980 Paperwork Reduction Act. We applauded the 1986 amendments.

BCORP fully supports the good government principles put into the Paperwork Reduction Act by the framers of the Act: Lawton Chiles, Frank Horton, Jack Brooks, Jack Danforth, Bill Roth, Jimmy Carter, Elmer Staats, and others. But we all know as they did--and as I am confident you do, Mr. Chairman--that fighting the paperwork battle is a lot like weeding a garden. You keep pulling, and the weeds keep growing! But still you have to keep on pulling, because if you stop, the weeds will completely choke out all of your plants.

BCORP is an independent, non-partisan, non-profit organization. Our membership includes individual citizens, small businesses, Fortune 500 companies, universities, professional associations, and industry-wide trade associations. Our membership probably represents the producers of over 50% of the nation's GNP. (A list of our current membership is attached to this statement as Appendix I.)

You have before you a panel of witnesses representing three of the business associations which responded to President Roosevelt's call to action back in 1942: (1) the National Association of Manufacturers, (2) the United States Chamber of Commerce, and (3) National Small Business United. I think you will find that their testimony reflects the continuing concerns of the business community over the serious economic impact on their limited resources of the enormous Federal demands to supply an ever-increasing array of information and to maintain an ever-greater range of records.

Few people are fully aware of the immense amount of time that businesses, and other members of the public, have to spend complying with Federal paperwork requirements--by our estimate 13 billion hours in 1987 (1.88 billion hours x 7, the average government understatement factor), or the equivalent of 6.5 million persons working full time year-round! To put this figure in perspective, let me tell you that this is twice the person hours that the Defense Department requires of the Armed Forces for the protection of our nation. (A fact sheet showing the calculation of total burden hours on business is attached as Appendix II.)

Business' share of respondent time is about 63% of that 13 billion-hour total, 8.2 billion hours, at a cost to the business sector of about $330 billion annually. In 1978 the Commission on Federal Paperwork calculated that the total cost of Federal paperwork "may exceed $100 billion a year." Eleven years later the cost to business alone is more than three times that amount.

Besides business, others heavily impacted by the staggering amount of Federal paperwork and its attendant costs are state and local government, universities, members of the agricultural sector, and individuals such as our taxpayers and senior citizens who must deal with the health care system.

BCORP wants to reiterate to this Committee its grave concern that the information burden upon the public--referred to as "paperwork"--may be at a "choke" point. The cumulative impact of government information demands on business and the public constitutes a significant cost to economic production, and is therefore a major factor in the competitiveness of the United States in the international marketplace. The advent of EC '92 is in itself cause to review the total cost to our economy of Federal paperwork.

This choke point situation vividly demonstrates the ongoing need to support and strengthen the management strategy contained in the Paperwork Reduction Act, which is aimed at finding the least burdensome way to fulfill the government's vital information needs.

## Procurement Policy Arena

The conduct of government procurements constitutes perhaps the most significant source of the paperwork burden on firms doing business with the government. On Monday, June 12, the Department of Defense witness told you that DoD's information collection budget is second in size only to that of the Department of the Treasury. According to the Department's witness, fully 98 percent of the DoD total is attributed to the defense acquisition system.

In terms of understating the true burdens of its information collections and recordkeeping requirements, the DoD is among the worst offenders. (The conclusions of a BCORP study of the degree of underestimation of the true burden by the various agencies is attached as Appendix III, and two examples of DoD paperwork whose burdens were grossly understated are discussed in Appendix IV.)

But let us look at the burdens just on the basis of DoD's own figures. The demands of the defense acquisition system's paperwork "burden hours" annually consume the equivalent of 123,563 work years. That is the product of an 8-hour working day times 261 days divided into 258 million burden hours. This equals the lifetime output of 2,745 human beings.

I suggest that the time it takes for a small business manager or owner to comply with government contract paperwork is a contributing cause to the exodus of many small firms from doing business with the government. A small business owner must spend his or her time in getting more business. Every hour spent away from the pursuit of new business costs the owner; he or she simply cannot afford the time it takes to comply with government paperwork.

BCORP does not have current estimates of the actual cost of paperwork to contractors. But assuming a modest rate of $40 an hour, including overhead, the cost to business easily exceeds $10.3 billion annually. Although $10.3 billion is about 3% of the defense budget, it does not begin to account for the paperwork cost to the government and certain other costs.

None of the paperwork burden estimates consider the time and cost of storing and maintaining essential records which document compliance. This is an important requirement which typically is overlooked by agencies in estimating the paperwork burden associated with compliance with statutes and regulations.

Our point, Mr. Chairman, is that the concept of an Information Collection Budget is a potentially powerful discipline on government's insatiable appetite for more and more information. Therefore, the requirements of the discipline demand that the government be accurate in the first instance in its estimate of the paperwork burden imposed on the private sector. Before DoD congratulates itself on meeting all OMB reduction goals, it must begin with an accurate measurement of its information collection budget.

We are very serious in our assertion that the discipline of the Paperwork Reduction Act begins with a realistic assessment of the burden-hours required to comply with the government's request for information.

## BCORP's Position

BCORP supports reauthorization of appropriations for OIRA. Since the early 1980's, the General Accounting Office has indicated that OIRA has not had the resources necessary to carry out its statutory responsibilities. We recommend that the Committee address the urgent question of what resources actually are needed, as the present level clearly is insufficient.

We strongly suggest that the Committee propose permanent authorization for OIRA, for the same reasons that you and other sponsors of the 1988 Office of Federal Procurement Policy Act Amendments supported permanent authorization for OFPP. Your continued oversight of OIRA's activities and that of the Federal agencies is absolutely critical if the objectives of the Paperwork Reduction Act are to be met. Periodic reauthorization is not the best mechanism available to assure the necessary evaluation of OIRA's performance.

Mr. Chairman, in your opening statement last Monday, you stated that you had a special interest in three areas: (1) Improving the Quality and Uses of Federal Information; (2) Public Participation and Awareness of OMB Decision-Making; and (3) The Scope of OMB's Regulatory Review Functions. Permit me a few observations on each area.

## Improving the Quality and Uses of Federal Information

The Council's members have been actively involved in working with the Federal agencies to improve statistical collections for five decades. We find that the quality and reliability of the government's business and economic statistics have decreased, particularly in the decade 1978-1988. There is an inverse relationship between the amount of information requested on the one hand,

and the likely response rate and quality of information provided on the other. The more information being requested, the greater the burden to collect and report it, and the less the likelihood that reliable information will be obtained. We see this as a "law of nature," not as a conscious desire on anyone's part to shirk his or her duty or to sabotage the system.

**BCORP and its members stand firmly behind the government's need to collect data**. The economic indicators produced by our statistical agencies are vital to industry for their long-range planning, as are many other statistical measures published by the government. Bear in mind that the business community is the nation's largest user of information, as well as its prime supplier. Information has an economic value. That value should not be squandered. It is absolutely essential to our members, as it is essential for the welfare of our nation, that the **data collected and published be accurate and timely**.

Our members believe that the **time and cost burden of data collecting and reporting is a serious issue** deserving the serious attention that your Committee is giving to the matter. We strongly support your efforts towards reducing as much as possible the respondent burden inherent in data collection activities.

As you know; the 1986 amendments to the Paperwork Reduction Act of 1980 added a definition of "information resources management" which included the concept of public burden. The providers of information would be considered a resource to be appropriately managed in meeting the government's needs. We support this concept.

Effective implementation of the resources management concept requires that all Federal agencies, OIRA included, become more sensitive to the public component of information management. For this reason we recommend that **statistical activities be kept together with the other information policy activities**. Assessing the burdens and practical utility of individual statistical collections, along with the cumulative impact of all government collections upon companies, is crucial to solving the reliability, quality, and timeliness problems of government statistics.

## Public Participation and Awareness of OMB Decision-Making

The emphasis that the Paperwork Reduction Act places on public participation in the government's decisions about information demands upon the public is the single most important concept in the Paperwork Reduction Act. BCORP is proud to have played a part in recommending language which became Section 3517 of the Act, requiring the Director of OMB to affirmatively act to provide interested persons and agencies early and meaningful opportunity to comment on all OIRA activities. We recommend that the Committee encourage OIRA to sponsor more public hearings than it has to date.

Under the PRA, the major responsibility for seeking comments and involving the public rests with the agencies. It is the agencies who are to provide Federal register notices and solicit public comments. It is they who are responsible for providing initial estimates of what they think the burden of proposed information requests will be. It is they who are primarily responsible for obtaining and using outside comments and expertise in their decision-making.

We strongly recommend that the Committee evaluate how well the agencies are fulfilling their responsibilities. Our experience shows that major improvements are needed in this area. There is a need to assure that agencies will open their processes to public comment. In no instance is this more true than in the case of the Department of Defense and procurement regulations. The Department does not abide by the Paperwork Reduction Act requirement that it must involve its suppliers in trying to make procurement regulations simpler and less burdensome.

We support the sunshine principles and sunshine amendments to the 1986 amendments, which require OIRA to work harder to let the public know how it arrives at its decisions. We do not, however, support unnecessary delays in the regulatory process, no matter who is responsible for the delay. We have great concern with unrevealed processes within many of the agencies, and with the unwillingness of those agencies to work with the public and to take the information resources management concepts seriously.

We have a specific recommendation which we believe would encourage greater public participation. The 1986 amendments mandated that OIRA report to Congress within a year on the "feasibility and means of enhancing public access, including access by electronic media, to information relating to information collection requests required by this chapter to be made available to the public" [Section 3505(6)(B)]. To the best of our knowledge, OIRA has not reported to Congress. We recommend that the Committee establish a goal for OIRA: to develop means to enable the public to electronically access all the information which PRA presently requires OIRA make "publicly available".

We believe an electronic bulletin board is technically feasible. If any agency should be a leader in the creative use of information technology to encourage public participation, it should be OIRA.

## Regulatory Review Functions of the Office of Information and Regulatory Affairs

The greatest growth of new information demands upon the public is coming from new regulations. Whether it be tax reform, immigration and naturalization procedures, or disclosure requirements regarding the workplace or the environment, most regulations depend on data collecting to monitor implementation and compliance. BCORP strongly supports linking regulatory reviews with the information clearance and other information policy tools of the Paperwork Reduction Act.

We believe that separating information resources management from regulatory review would devastate the ability of the agencies and OIRA to minimize the burden of information requests. In the eyes of the business community, and of the general public as well, the paperwork burden and the regulatory burden are often one and the same. There is absolutely no way for these two burdens to be separated without doing damage to efficacy and efficiency.

Moreover, the largest opportunity for reducing the regulatory burden long-term probably lies in applying new information technologies to regulatory needs. Separating regulatory review from the other information management responsibilities precludes this opportunity and would, we believe, be a serious mistake.

Some critics of OIRA's role in reviewing regulations have asserted that Section 3518(e) of the PRA prohibits the President or the Director of OMB from employing the PRA in ways that reach the "substantive policies and programs" of the agencies. As an outgrowth of this interpretation, every time OMB has disagreed with an agency proposal, it has been criticized for having "abused" its authority under the PRA.

Our experience is that all agency activities, including the technical design of forms, involves the "substantive policies and programs" of the agency. An interpretation such as that made by the critics of the PRA would render the Act meaningless.

Section 3518(e) was crafted in this Committee by Senators Chiles, Danforth, and Ribicoff. It was intended as a savings provision and reads: "Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws."

To illustrate the grave threat posed to OIRA's effectiveness by this language, we are providing for the record a copy of an Amicus Curiae brief recently filed by BCORP with the Supreme Court, in which we joined the Solicitor General and Senator Lawton Chiles in requesting the Court to review a Third Circuit opinion on the Paperwork Reduction Act.

Mr. Chairman, given an inch, many agencies will take a mile to find a way to get out from under the legitimate requirements of the Paperwork Reduction Act. **We recommend that the Committee adopt clarifying language to prevent a false interpretation of Section 3518(e).**

## BCORP Recommendations

In summary, Mr. Chairman, given the burdens of time and money that Federal information collections impose on the business sector, which in turn affects their competitiveness vis-a-vis other industrialized countries, we believe that **it is imperative that OIRA funding be reauthorized**. As part of that reauthorization, we urge this Committee to give serious thought to the following recommendations which we feel will serve to strengthen the paperwork review process:

1. **The Office of Information and Regulatory Affairs within OMB should be permanently authorized** in order to prevent constant triennial reconsideration. OIRA is consistently less effective in the year before and the year after its reauthorization, concentrating as it does in those periods on avoiding any possible agency unhappiness rather than on carrying out its mandated obligations.

2. **OIRA should be encouraged to sponsor more public hearings** than it has had to date.

3. **OIRA should be encouraged to apply**, in a more effective manner, **the PRA's provisions to** the costly paperwork requirements entailed in **the procurement processes** which largely prevent small business from participation.

4. **OIRA staff strength should be brought up** to the level found by the General Accounting Office to be necessary to carry out its functions.

5. **The statistical policy activities of OIRA should be retained within OIRA, together with its other information policy activities**.

6. **OIRA should be instructed to give far greater consideration to the competitive impact** of many of the regulatory paperwork requirements currently being approved, which are adding quite substantially to the cost of doing business in a worldwide market.

7. **Agency clearance officers**, charged with the first line responsibility to prevent unnecessary, impractical or duplicative paperwork, **should be required to pass a training course conducted by OIRA** on the specific requirements of the PRA.

8. **Desk officers at OIRA should receive training regarding the Paperwork Reduction Act** and should be reviewed by their superiors to determine to what extent they have an in-depth understanding of the PRA.

9. Consistent with the 1986 amendments to the PRA, **OIRA should report to Congress regarding the "feasibility and means of enhancing public access, including access by electronic means** to information relating to data collection requests, required ... to be made available to the public." [Section 3505(6)(B)]

10. **Congress should insist**, consistent with Section 3506(c)(3) of the PRA and Rule XXVI, Paragraph 11(b), of the Standing Rules of the Senate, **on a "paperwork impact review" of all legislation sent to the floor, and provision should be made for relief from paperwork that proves to exceed the estimates given in the legislation**.

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Thank you, Mr. Chairman and Members of the Committee. It is with great pleasure that BCORP looks forward to working with you in the future.

## BCORP APPENDIX I

### List of BCORP Members as of June 16, 1989

### 56 CORPORATE MEMBERS

ALUMINUM COMPANY OF AMERICA
AMERICAN EXPRESS COMPANY
AMOCO
ARMSTRONG WORLD INDUSTRIES, INC.
ASHLAND OIL, INC.
AT&T
BOEING COMPANY
BURLINGTON INDUSTRIES, INC.
CAROLINA POWER & LIGHT COMPANY
CHARLES BECK MACHINE CORPORATION
CHEVRON CORPORATION
CPC INTERNATIONAL, INC.
DOW CHEMICAL U.S.A.
DUKE POWER COMPANY
E.I. DUPONT DE NEMOURS & CO., INC.
EASTMAN KODAK COMPANY
EATON CORPORATION
EBCO MANUFACTURING COMPANY
ELECTRONIC DATA SYSTEMS CORPORATION
EMHART CORPORATION
EXXON COMPANY, U.S.A.
FORD MOTOR COMPANY
GENERAL BUSINESS SERVICES, INC.
GENERAL ELECTRIC COMPANY
GENERAL MOTORS CORPORATION
GLAXO INC.
GTE SERVICE COPORATION
GUARDIAN LIFE INS. CO. OF AMERICA
HALLIBURTON COMPANY
HEWLETT-PACKARD COMPANY
HUGHES AIRCRAFT COMPANY
IBM CORPORATION
INGERSOLL-RAND COMPANY
ITT
S. C. JOHNSON & SON, INC.
KWASHA LIPTON, INC.
MCA, INC.
McDERMOTT, WILL & EMERY
MERCK & COMPANY, INC.
MOBIL CORPORATION
PAPERWORK EVALUATION GROUP
PFIZER, INC.
PHILIP MORRIS COMPANIES, INC.
PROCTER & GAMBLE MFRG COMPANY
ROCKWELL INTERNATIONAL CORPORATION
ROHM & HAAS COMPANY
SHELL OIL COMPANY
SUN REFINING & MARKETING COMPANY
TEXACO, INC.
TRANSAMERICA INC.
TRW INC.
UNILEVER UNITED STATES, INC.
UNION CARBIDE CORPORATION
UNITED TECHNOLOGIES CORPORATION
VULCAN MATERIALS COMPANY
WESTPOINT-PEPPERELL, INC.

### 28 ASSOCIATION MEMBERS

AMER. ASSOCIATION OF NURSERYMEN
AMER. GAS ASSOCIATION
AMER. HOTEL & MOTEL ASSOCIATION
AMER. PETROLEUM INSTITUTE
AMER. SUBCONTRACTORS ASSOCIATION
AMER. TRUCKING ASSOCIATIONS
ARMA INTERNATIONAL
ASSOCIATED EQUIPMENT DISTRIBUTORS
CHEMICAL MANUFACTURERS ASSOCIATION
COMPUTER & BUS. EQUIP. MFRS ASSOC.
CORN REFINERS ASSOCIATION
FINANCIAL EXECUTIVES INSTITUTE
EDISON ELECTRIC INSTITUTE
ELECTRONIC INDUSTRIES ASSOCIATION
INDUSTRIAL BIOTECHNOLOGY ASSOCIATION
NATL ASSOCIATION OF BROADCASTERS
NATL ASSOCIATION OF MANFACTURERS
NATL COAL ASSOCIATION
NATL ERECTORS ASSOCIATION
NATL KNITWEAR MFRS ASSOCIATION
NATL MACHINE TOOL BUILDERS ASSOC.
NATL PROPANE GAS ASSOCIATION
NATL SMALL BUSINESS UNITED
NATL TIRE DEALERS & RETREADRS ASSOC.
NONPRESCRIPTION DRUG MFRS ASSOCIATION
PACKAGING MACHINERY MFRS INSTITUTE
PHARMACEUTICAL MFRS ASSOCIATION
SOUTHERN GAS ASSOCIATION

### 2 UNIVERSITY MEMBERS

GEORGE WASHINGTON UNIVERSITY
JOHNS HOPKINS UNIVERSITY

### 2 INDIVIDUAL MEMBERS

JAMES B. MORRISON, ESQUIRE
DR. PHILIP D. NICOLL

BCORP APPENDIX II

# THE FEDERAL PAPERWORK BURDEN ON THE BUSINESS SECTOR

Since the passage of the Paperwork Reduction Act in 1980, data on the burden of Federal Paperwork has been reported by OMB in its annual Information Collection Budget (ICB).

Based on OMB's reports for fiscal years 1981 to 1987 (a 7-year period) there has been a 66% increase in total paperwork burden. This increase has occurred notwithstanding the approximately 5% reductions that have been achieved each year through the OMB review process. The increase results from the new laws, passed by Congress, which when interpreted by the regulatory agencies, have substantially increased the total burden.

Year after year 60% or more of the total paperwork burden has been imposed on the business sector of our economy as revealed by OMB's data.

According to OMB, in 1987 the total paperwork burden imposed on the public was 1.88 billion hours, and business was found to carry 63% of that burden, amounting to 1.18 billion hours. Since research groups, academia, and BCORP have all found that the true burdens of the paperwork proposed by agencies is generally 700% greater than the figure supplied by the agencies (as recently admitted by the IRS) we have adjusted for these understatements, and put the actual burden on business as follows:

| | Our Calculation Of True Burden | OMB figure, before IRS adjustment |
|---|---|---|
| 1981: | 5.5 billion hours | 786 million |
| 1987: | 8.3 billion hours | 1.185 billion |

Using the conservative estimate of a $40-per-hour cost for the time and overhead of corporate accountants, this translates into a cost to business of $330 billion in 1987, or an aggregate of about 4 times more than total corporate income taxes paid of $84 billion (in 1987).

In 1978 the paperwork burden on the entire public was estimated by the Paperwork Commission at 'not less than' $100 billion. At that time, the Gross National Product (GNP) was $2.25 trillion. Hence, the paperwork burden at that time was 'at least' 4.4% of GNP. The intent of the Commission, and of the Paperwork Reduction Act passed as a result of the Commission's studies, was to improve the situation and put less of a strain on our economy.

At $330 billion, Federally imposed paperwork on the business sector alone now represents about 7.3% of our Gross National Product (at $4.53 trillion in 1987). And that figure does not include the paperwork burden on the non-business sectors of our economy.

## BCORP APPENDIX III

### BCORP STUDY OF THE EXTENT OF UNDERESTIMATING BY FEDERAL AGENCIES OF THE PAPERWORK BURDEN ON BUSINESS RESPONDENTS

| | | True Burden as % of Total Federal Paperwork Burden | |
|---|---|---|---|
| Agency | Agency Estimate as % of True Burden | Based on BCORP Data for BUSINESS Burden | Based on OMB Data for TOTAL PUBLIC Burden |
| Agriculture | 12.5 | 2.00 | |
| Commerce: | | | |
| BEA | 25.0 | 3.50 | |
| Census | 20.0 | 4.50 | |
| Other | --- | <.25 | |
| Defense & GSA | 8.3 | 25.00 | |
| Education | 50.0 | <.25 | |
| EOC | 25.0 | 0.50 | |
| Energy: | | | |
| EIA | 20.0 | 2.50 | |
| FERC | 25.0 | 0.50 | |
| Other | --- | <.25 | |
| EPA | 10.0 | 4.50 | |
| HHS | 10.0 | 1.00 | |
| HUD | 20.0 | 0.50 | |
| Interior (excl. BIA) | 50.0 | 0.50 | |
| Justice | 30.0 | 2.00 | |
| Labor: | | | |
| BLS | 90.0 | 1.00 | |
| ERISA Forms | 5.0 | 3.00 | |
| Other | --- | <.25 | |
| SBA | 100.0 | 0.25 | |
| Transportation | 25.0 | 4.00 | |
| Treasury: | | | |
| Customs | 50.0 | 0.50 | |
| IRS (pre-revision) | 14.3 | 44.00 | |
| ALL AGENCIES | 13.98<br>(Weighted Average) | 99.75 | |

## BCORP APPENDIX IV

### Examples of Recent Gross Underestimations by the Department of Defense of Procurement Paperwork Burdens

In calculating its burden hours, the Department of Defense relies on its own specious estimates, as demonstrated by the following examples which BCORP's Procurement Committee has collected from the Federal Register.

### 1. Filling out Standard Form 1411, Cost and Pricing Data: 4 hours

In the Air Force One procurement, one defense contractor spent $800,000 pulling together cost and pricing data as part of its SF 1411 submission. Every page and every quotation was subject to the criminal and civil penalties of the Truth in Negotiations Act. The risk is far too great not to check and double-check every figure. Four hours to prepare Standard Form 1411 is inconceivable -- a cruel joke devised by DoD to deceive OIRA or the public.

The DoD also estimated that only one hour is devoted by contracting officers in reviewing SF 1411's. If that estimate is accurate, the Inspector General and Congress should be outraged -- cost and pricing data submissions on SF 1411 are the government's first and best line of defense against over-pricing of contracts. No one on either side of the table takes the SF 1411 submission and certification as cavalierly as DoD's paperwork burden estimators apparently do.

### 2. Certification of Procurement Integrity: 5 minutes

Five minutes to comply with the Procurement Integrity Act is a ridiculous estimate, again indicative of DoD approaches to the Paperwork Reduction Act. This new statute is extremely far reaching. Noncompliance can result in very substantial contractual, civil and criminal penalties, including immediate suspension of the contractor and termination of the contract, as well as profit recapture. It is very unlikely that any responsible contractor will take casually the reporting and certification requirements of the government procurement system. Consequently, a good deal more time is spent in making certifications than the 5 burden-minutes charged by DoD to its information collection budget.

# Statement
# in support of Reauthorization of the Office of Information and Regulatory Affairs

presented by

Gerry Graff
Graff Flooring Contractor
Albuquerque, New Mexico

on behalf of

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**NATIONAL SMALL BUSINESS UNITED**
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**SMALL BUSINESS LEGISLATIVE COUNCIL**
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before the

Subcommittee on Government Information and Regulation
Committee on Governmental Affairs
United States Senate

June 16, 1989

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## Statement of Gerry Graff in Support of Reauthorization of the Office of Information and Regulatory Affairs

I am Gerry Graff, president of Graff Flooring Contractor in Albuquerque, New Mexico. Today, I am representing the American Subcontractors Association, National Small Business United, and the Small Business Legislative Council.

The American Subcontractors Association (ASA) is a national trade association with more than 8,000 firms representing all major construction trades in 60 chapters. In addition to its own individual company members, ASA represents 15 other specialty construction trade associations with members of their own.

National Small Business United is a voluntary association of small businesses from across the country. Founded from a merger of the National Small Business Association, the nation's oldest small business association, and Small Business United, NSBU has 50,000 members and 19 regionally-affiliated member organizations. Member businesses range in size from the very smallest to those of hundreds of employees (NSBU considers a small business to be one with fewer than 500 employees).

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. SBLC's members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of SBLC members is attached (Attachment A).

Reducing the information collection and paperwork burdens imposed by the federal government on small businesses was one of the principal recommendations of the delegates to the 1980 White House Conference on Small Business. The growth of information requirements continues to be a principal concern of small businesses.

ASA, NSBU and SBLC support permanent reauthorization of the Office of Information and Regulatory Affairs (OIRA). Indeed, we believe the Office should be strengthened so that it can better achieve the objectives of the Paperwork Reduction Act (PRA) to minimize federal paperwork burdens on individuals and businesses; to minimize the government's cost of collecting, maintaining, using, and disseminating information; to maximize the usefulness of information collected by the government; and to coordinate federal information policies.

We believe the PRA has been a success. But it has not been enough of a success. There still is much to be done to stem the flood of paperwork which is drowning millions of small businesses . Let me give you an example of the rising tide of paperwork.

Ten years ago, I had one full-time person in the office. Today, I have two and one-half. During the same ten year period, salaries and office supplies grew from $18,000 to $43,000. Yet, factoring in inflation, my sales are about the same. I attribute most of the growth in overhead to additional paperwork requirements imposed by government.

Let me give you a specific example. In 1979, I performed a contract for an educational building for the Veterans Administration; the project file for that contract is one inch thick. I recently completed a similar contract on an outpatient clinic at Kirtland Air Force Base; the project file for that contract is 8 1/2 inches thick. On a recent private sector project--one three times as large as the Kirtland project--the project file is only one inch thick. In the private sector file is a one page invoice requesting payment. The invoice for the government is 18 pages long. This demonstrates well the burdens that often are generated by the government.

But the PRA does work. As reported to SBLC by the American Gear Manufacturers Association, the gear manufacturing industry recently was confronted with three different agencies wanting to investigate its competitive position in U.S. and global markets. Under the leadership of OMB, the U.S. International Trade Commission, the U.S. Department of Commerce, and the U.S. Department of Defense combined their information requirements into a single survey to be conducted by the ITC (See Attachment B).

This is the way PRA and OIRA should work. Unfortunately, it frequently doesn't. That is the reason we call on this Subcommittee to strengthen the Act.

One of our principal concerns is with claims by some that the Paperwork Reduction Act does not give the Director of the Office of Management and Budget (OMB), and thus OIRA the authority to determine whether a particular paperwork requirement is necessary or useful to accomplish a particular substantive policy. They claim that OIRA cannot intercede when an agency's substantive policymaking responsibilities or authority is involved. Such claims force one to ask the very basic question: What paperwork requirements would an agency be creating that does not involve its basic mission? If one takes these claims seriously, then OIRA has no authority at all.

These claims represent an erroneous interpretation of the PRA and remove the OMB Director's authority under Section 3504(c)(2) of the PRA to review the "necessity" and "practical utility" of paperwork requirements. The only interpretation which preserves both an agency's substantive mission and the PRA's purposes is that the agency makes the policy and OMB determines whether a proposed paperwork requirement is necessary or useful in achieving the policy. That it, OMB cannot and should not tell an agency that it can't meet its mission; however, it can and must tell an agency that it must meet its mission in the most effective, efficient and economical way possible.

Perhaps, the most telling example of this debate is the Occupational Safety and Health Administration's Hazard Communication Standard. It is this Standard which has led to the U.S. Supreme Court's review of the Third Circuit's decision in United Steelworkers of America v. Pendergrass. While I don't think anyone, least of all me or the organizations I represent today, oppose the HazCom Standard or its goal of protecting employees from hazardous substances, there can be no doubt that it imposes an incredible paperwork burden on U.S. businesses. For example, before the implementation of the Standard, I had to purchase toner for my office copier every three months at $80.00 each. Since I began complying with HazCom, I have to replace the toner every six weeks. It won't be long before I will have to buy a new copier just to keep up with the new requirements. I didn't even need a copier in my office until 1983.

ASA, NSBU, and SBLC urge the Subcommittee to resolve the debate over OMB's intended role in regulating the paperwork burden imposed by administrative agencies by clarifying that OMB has the authority to determine whether an agency's proposed information collection and paperwork requirements are practical and necessary and to direct that agency to meet its mission in a more efficient and economical manner.

ASA, NSBU, and SBLC also urge the Subcommittee to strengthen the public protection requirements of the PRA. One way to do this would be to approve a provision similar to one added by Congress last year to the Office of Federal Procurement Policy Act (Public Law 100-679). This provision requires the Administrator of OFPP to respond within sixty days to a public request for a determination of whether a procurement rule is consistent with the Federal Acquisition Regulation. We think a similar requirement of the OIRA Administrator would make the agency more responsive to the concerns of the public.

Let me give you an example of a situation where such a provision would be particularly useful. On April 27, the General Services Administration's Federal Supply Service published in the Federal Register a proposed contract modification, requesting public comment by May 30, and announcing implementation on June 30. How thorough a review of the public comments could FSS conduct during the seven days allowed for review? How serious did FSS intend to take any public comments when it announced the effective date at the same time it requested public comment? Yet the FSS proposal would have required a contractor to supply a Material Safety Data Sheet for each unit of issue in a shipment. This requirement would have imposed extensive new paperwork requirements on FSS contractors beyond those intended by OSHA. Nonetheless, FSS made no mention of the PRA in its public notice.

SBLC called the attention of this problem to the OIRA Administrator (Attachment C); and, fortunately, Mr. Plager was most responsive. Indeed, FSS has postponed its proposal "indefinitely" in the face of OIRA's concerns. However, there is no formal procedure in place to deal with a situation such as this. We believe a procedure similar to that in the OFPP Act would be most effective.

One of the most serious abusers of "information collection and reporting requirements" is the Congress itself. Congress frequently passes new laws that impose enormous paperwork burdens with no consideration to the impact on individuals and businesses. Witness immigration reform and the creation of the I-9. Witness tax reform and the creation of the new W-4. Witness Section 89.

The Paperwork Reduction Act recognized that Congress frequently is the culprit in the creation of paperwork. It explicitly charges OMB and the agencies with reviewing proposed legislation and submitting comments on the information collection and paperwork burdens to Congress. Yet neither OMB nor the agencies have initiated comments to Congress on the paperwork requirements of proposed legislation; and Congress has not demanded such comments.

ASA, NSBU and SBLC believe Congress should demand that agencies' comments on proposed legislation include a discussion of the impact on individuals and businesses of the legislation's information collection and paperwork requirements. In addition, we urge this Subcommittee to assure that other committees in the Senate comply with the Senate rule requiring such information to be included in committee reports.

Summary

In summary, Mr. Chairman, ASA, NSBU and SBLC strongly support the permanent reauthorization of OIRA. Information collection and paperwork problems will not go away; the solution must be a permanent one. We believe that OIRA is the one place in government that focuses on the meaning of the cumulative impact of government regulations, data collection and paperwork. Government must search out the most efficient and the least burdensome ways to meet information needs.

In addition, ASA, NSBU, and SBLC strongly believe that the OIRA review of agency regulations should be kept intact with its other information policy responsibilities. We do not know how the Act's purpose of minimizing the overall burden of paperwork on the public and business can be met if regulatory responsibilities are separated from information responsibilities.

ASA, NSBU and SBLC also recommend that a provision be added to the Act to require the OIRA Administrator to respond within 60 days to a public request for a determination of whether an agency rule or form complies with the PRA. The model for such a procedure is contained in the OFPP Act.

Finally, ASA, NSBU and SBLC request that Congress take steps to mitigate its own tendency to create and impose new paperwork burdens on individuals and businesses. The PRA already provides a mechanism to help in this process; the mechanism should be used.

All three of the organizations I represent today will be happy to work with the Subcommittee to strengthen the PRA and to develop procedures so that OIRA can perform its job more effectively.

*Attachment A*

SMALL BUSINESS
LEGISLATIVE
COUNCIL

## Members of the Small Business Legislative Council

Air Conditioning Contractors of America
Alliance of Independent Store Owners and Professionals
American Association of Nurserymen
American Collectors Association, Inc.
American Consulting Engineers Council
American Council of Independent Laboratories
American Dental Trade Association
American Floorcovering Association
American Institute of Architects
American Machine Tool Distributors Association
American Road & Transportation Builders Association
American Society of Travel Agents, Inc.
American Sod Producers Association
American Subcontractors Association
American Textile Machinery Association
American Trucking Associations, Inc.
American Warehousemen's Association
Architectural Precast Association
Associated Builders & Contractors
Associated Landscape Contractors of America
Association of Physical Fitness Centers
Association of Small Business Development Centers
Association of the Wall and Ceiling Industries-International
Automotive Service Association
Bowling Proprietors Association of America
Building Service Contractors Association International
Business Advertising Council
Christian Booksellers Association
Council of Fleet Specialists
Electronics Representatives Association
Florists' Transworld Delivery Association
Helicopter Association International
Independent Bakers Association
Independent Bankers Association of America
Independent Medical Distributors Association
International Association of Refrigerated Warehouses
International Bottled Water Association
International Communications Industries Association
International Fence Industry Association
International Franchise Association
Latin American Manufacturers Association
Machinery Dealers National Association
Manufacturers Agents National Association
Mechanical Contractors Association of America, Inc.
Menswear Retailers of America
NMTBA-The Association for Manufacturing Technology
National Asphalt Pavement Association
National Association for the Self-Employed
National Association of Brick Distributors
National Association of Catalog Showroom Merchandisers
National Association of Chemical Distributors
National Association of Development Companies
National Association of Home Builders
National Association of Investment Companies
National Association of Manufacturing Opticians
National Association of Passenger Vessel Owners
National Association of Personnel Consultants
National Association of Plumbing-Heating-Cooling Contractors
National Association of Realtors®
National Association of Retail Druggists
National Association of Small Business Investment Companies
National Association of the Remodeling Industry
National Association of Truck Stop Operators
National Association of Women Business Owners
National Campground Owners Association
National Candy Wholesalers Association
National Chimney Sweep Guild
National Coffee Service Association
National Council for Industrial Innovation
National Electrical Contractors Association
National Fastener Distributors Association
National Grocers Association
National Independent Dairy-Foods Association
National Knitwear & Sportswear Association
National Lumber & Building Material Dealers Association
National Moving and Storage Association
National Office Products Association
National Paperbox & Packaging Association
National Parking Association
National Precast Concrete Association
National Shoe Retailers Association
National Society of Public Accountants
National Tire Dealers & Retreaders Association
National Tooling and Machining Association
National Tour Association
National Venture Capital Association
Opticians Association of America
Petroleum Marketers Association of America
Printing Industries of America, Inc.
Professional Plant Growers Association
Retail Bakers of America
SMC/Pennsylvania Small Business
Small Business Council of America, Inc.
Society of American Florists
Specialty Advertising Association International
United Bus Owners of America

1025 Vermont Avenue, N.W., Suite 1201, Washington, DC 20005
PHONE NO.: (202) 639-8500 / FAX NO.: (202) 347-4777

*Attachment B*

Small
Business
Legislative
Council®

May 30, 1989

The Honorable S. Jay Plager
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
17th Street & Pennsylvania Avenue, N.W.
Washington, DC 20503

Dear Dr. Plager:

The Federal Supply Service of the General Services Administration has proposed a contract modification (54 Fed. Reg. 18155 (April 27, 1989)), which has no mention of the need for OMB approval of the information collection requirements. Yet the proposal would, in SBLC's opinion, significantly increase the information collection and transfer requirements on GSA contractors. See enclosed copy of the SBLC comments on the GSA proposed contract modification.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of our members is attached.

SBLC hereby formally requests that you review the GSA proposed rule to determine whether the additional paperwork requirements are necessary, how they fit into GSA's "paperwork budget," and whether they are necessary to achieve the goal of both protecting the government's employees under OSHA's Hazard Communication Standard and efficient and economical procurement.

We look forward to your response.

Sincerely,

T. Peter Ruane

T. Peter Ruane
Chairman

TPR/S1032
Enclosure

1025 Vermont Avenue, NW/Suite 1201/Washington, D.C. 20005/(202) 639-8500

Small
Business
Legislative
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May 30, 1989

General Services Administration
Federal Supply Service
Office of Commodity Management (FC)
Operations Management Division (FCO)
1941 Jefferson Davis Highway
Crystal Mall Building #4, Room 522
Arlington, VA 22202

Re: Material Safety Data Sheets
(54 Fed. Reg. 18155 (April 27, 1989))

Gentlemen:

The Small Business Legislative Council is concerned about the impact the above-cited proposal will have on small business contractors with the General Services Administration's Federal Supply Service. The proposed contract clause would significantly increase the paperwork requirements of such contractors and expand their potential liability.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of over four million small businesses in manufacturing, retailing, distribution, professional and technical services, construction, transportation and agriculture. A list of our members is attached.

The Occupational Safety and Health Administration's Hazard Communication Standard was designed to give employers the information they need to protect employees from exposure to hazardous substances. It is apparent that, through this proposal, FSS is attempting to shift part of its responsibility to protect government employees to its contractors. In doing so, FSS creates and imposes extensive new regulatory and paperwork requirements on its contractors beyond those intended by OSHA.

For example, clause (b) requires a contractor to supply an MSDS for each unit of issue in a shipment. This imposes substantial requirements beyond the OSHA Standard, which merely requires a supplier to include one MSDS

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with the initial shipment of a hazardous product. Suppliers have to send a new MSDS only when the chemical makeup of the product changes. The end user of the product, in this case the government, must determine whether its employees will use the product in a way that will create a hazard. The end user then must make and distribute the necessary copies of the MSDS to the locations where its employees are using the product.

The "multiple copy" requirement is both expensive and confusing. The cost and time associated with making multiple copies of MSDSs, which can run as long as 15 pages, would be prohibitive for many small businesses and unnecessarily increase the cost to the government. Does FSS want a contractor to send multiple copies of the MSDSs for consumer products, such as Pepto-Bismol? How does FSS recommend that a contractor handle an MSDS from one of the many manufacturers that routinely send MSDSs for their entire product line when one product is purchased? How many copies of MSDSs for wood dust would be required for a shipment of lumber?

As a further example of the additional burdens imposed by the proposed rule, clause (a) requires a contractor to prepare an MSDS for each hazardous substance in a shipment to FSS and to include in that MSDS information beyond that required by OSHA. Yet OSHA requires only a chemical manufacturer or importer to make the hazard determination and prepare an MSDS. Most government contractors are not manufacturers and, thus, would not prepare an MSDS. A downstream seller of the product (suppliers, wholesalers, dealers, retailers, etc.) simply is required to pass the MSDS on to the next user. If the downstream seller modifies that MSDS in any way, it assumes the responsibility and liability for the accuracy of the information contained in the MSDS.

Finally, it is unclear what FSS intends by an "MSDS Contact Point" under clause (f). Under the OSHA Standard, each MSDS is required to include a telephone number for further information. Again, this phone number would typically be that of the manufacturer. Does FSS mean this phone number to be that of the individual in the contractor's business who is responsible for collecting and distributing MSDSs?

In light of the scope of the proposed change, SBLC requests GSA to extend the comment period for a least another 60 days to July 29, 1989, in order to allow the many small businesses that will be affected by the proposal to review and comment. This extension also will allow GSA to conduct a thorough regulatory review and analysis of the impact of the proposal on its contractors, particularly small business contractors. Finally, an extension of the comment period will allow the proposal to be reviewed by the GSA Administrator and the FAR Council, as required by the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679), to determine if it is necessary for the FSS contract to differentiate from the GSAR and the FAR in this regard.

In the meantime, SBLC plans to ask the administrator of the Office of Federal Procurement Policy to review the proposal to determine whether it is consistent with the FAR and to deny the promulgation of the contract clause if he determines that it is inconsistent.

In addition, SBLC notes that the proposal published in the Federal Register did not include any mention of the additional information requirements imposed by the rule that require the review and approval of the OMB's Office of Information and Regulatory Affairs. Therefore, SBLC plans to request such a review by the administrator of OIRA.

Sincerely,

T. Peter Ruane

T. Peter Ruane
Chairman

TPR/S1030
Enclosure

*Attachment C*

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

March 22, 1989

The Honorable Anne Brunsdale
Acting Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Madame Chairman:

The U.S. gear manufacturing industry produces components that are essential to most industrial and transportation equipment. The industry, which has experienced a dramatic increase in imports since 1983, is unable to assess properly its trade concerns because U.S. government and private data on the industry's production and trade composition are fragmented and incomplete. The American Gear Manufacturers Association has formally requested assistance providing the industry with a comprehensive set of objective data.

Pursuant to Section 332(g) of the Tariff Act of 1930, I request that the U.S. International Trade Commission conduct an investigation and prepare a report on the competitive position of the U.S. gear industry in U.S. and global markets.

Specifically, the Commission report should provide to the extent possible the following:

- Profiles of the U.S. industry and major foreign industries;
- A descriptive assessment of the global market for gears, to the extent possible, using categories of gear products most useful to the industry;
- A comparison of U.S. and foreign producers' strengths and weaknesses in such areas as: (1) raw material, labor, and capital availability; (2) technological capabilities; (3) extent of plant and equipment modernization; (4) end-product quality, pricing, and service support; and government involvement.
- U.S. and foreign industry and U.S. consuming industry views on market direction and potential for the U.S. industry.

The Commission should provide its completed report no later than 12 months from receipt of this request.

The Honorable Anne Brunsdale
Page Two

I understand that Defense Department agencies, led by the Navy, have asked the U.S. Department of Commerce to conduct a study with respect to the gear industry under section 705 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2155). In this study, Commerce will be required to collect and analyze certain data identical to that which the Commission will be required to collect in the section 332 study as well as certain additional data.

To minimize the burden placed on industry in supplying data to the Government, the Office of Management and Budget, acting pursuant to its authority under the Paperwork Reduction Act, has indicated that the information should be requested of industry respondents through a single survey. Since the Commerce study requires that questionnaires be sent only to U.S. gearmakers, whereas the section 332 study has a broader scope and will query other groups in addition to the U.S. gearmakers, the section 332 questionnaire should be designed to gather what additional information is needed for the Commerce study.

Accordingly, we ask that your office work with appropriate officials of the Department of Commerce in the development of portions of the questionnaire that will pertain to Commerce's responsibilities. When you have assembled this data it should be transmitted directly to Commerce in a mutually agreeable form along with whatever data gathered in response to our section 332 request is appropriate.

In accordance with USTR policy as set forth in my letter to you on February 16, I direct you to mark as "confidential" such portions of the Commission's report and its working papers as my Office will identify in a classification guide. Information Security Oversight Office Directive No. 1, (sections 2001.2 and 21, implementing Executive Order 12356, sections 2.1 and 2.2.) requires that the classification guides identify or categorize the elements of information which require protection. Accordingly, I request that you provide my Office with an outline of this report as soon as possible. Based on this outline and my Office's knowledge of the information to be covered in the report, a USTR official with original classification authority will provide detailed instructions. The Commission's assistance in this matter is greatly appreciated.

Sincerely,

Carla A. Hills

CAH:mjd
cc: U.S. Department of Commerce

# STATEMENT
on
# REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT
before the
SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION
of the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
for the
U.S. CHAMBER OF COMMERCE
by
Carol Miller
and
Dr. Earl H. Hess
June 16, 1989

Mr. Chairman and members of the Subcommittee, I am Carol Miller, Vice President and Director of Human Resources for Lancaster Laboratories, Inc. located in Lancaster, Pennsylvania. My company is an independent laboratory providing chemical and biological services to a wide range of clients in the food, environmental, and pharmaceutical areas. I am here today testifying on behalf of the U.S. Chamber of Commerce, the world's largest federation of businesses, chambers of commerce, and trade and professional associations. Accompanying me is Dr. Earl H. Hess, the President and founder of Lancaster Laboratories, Inc. He is a member of the Board of Directors of the U.S. Chamber of Commerce, Chairman of the Legislative Policy Committee of its Small Business Council, and Chairman of its Committee on Environment. The Chamber is pleased to present its views on this most critical issue.

The Chamber supported the Paperwork Reduction Act (PRA) when it first was passed in 1980 and supported reauthorization in 1986. We strongly recommend the reauthorization of the PRA this year. The Chamber also supports this Subcommittee's efforts to eliminate excessive and duplicative paperwork burdens.

Congress passed the PRA in December 1980, extensively amending the 1942 Federal Reports Act in a major effort to reduce federal paperwork burdens by focusing control over agencies' paperwork requirements in one place, the Office of Management and Budget (OMB). The PRA created a new entity, the Office of Information and Regulatory Affairs (OIRA) within OMB to implement the Act. The Director of OMB is empowered to review all federal agency paperwork burdens and assign an OMB "control number" to each approved requirement.

The new law set specific paperwork reduction percentages and established a mechanism to allow for greater public participation in the process of making information collection or paperwork policy. Under the "Public Protection" provision of the PRA, no one can be punished for failure to comply with an "information collection request subject to the Act" that has not been approved by OMB and assigned a control number. OMB also was required to implement a Federal Information Locator System (FILS) within one year to provide a complete inventory of all information requirements and, therefore, eliminate all duplicative requirements.

The preamble to the PRA specifically identifies small business as one of the principal beneficiaries of the Act, which was adopted by the same Congress that enacted the Regulatory Flexibility Act (RFA) of 1980 only two months earlier. Congress believed that these two laws, in conjunction with a third law passed the same year -- the Equal Access to Justice Act -- would provide an integrated approach to providing broad regulatory relief for the nation's small businesses.

Executive Order 12291, promulgated in January 1981, established deregulation as a top Reagan Administration priority, making "cost/benefit" analyses material to regulatory reviews and imposing the responsibility for reviews on the OIRA. Consequently, OIRA published in 1983 its first regulation under the PRA. While far-reaching, this implementing regulation did not eliminate all the small business paperwork burdens originally anticipated.

Cost/benefit analyses of regulatory requirements are permitted by a number of statutes imposing regulatory burdens on the public and are encouraged by Executive Order 12291. However, this approach usually has not been applied to paperwork requirements. Many small businesses believe that the burden of paperwork compliance bears no real relationship to the perceived public benefit. Thus, before paperwork burdens are imposed, agencies should be required to determine the complete cost of these requirements on small business and to weigh the burdens against the expected benefit. If the burden outweighs the benefit, the information collection should not be permitted.

During 1988, OMB estimated that 1.8 billion hours of public time were spent in satisfying the demands of federal agencies for information. However, an independent study commissioned by the Internal Revenue Service (IRS) indicates that the public actually spent well over 5 billion hours on IRS forms alone. Of the total burden, more than 50 percent was imposed on businesses. While efforts to reduce the overall burden have been partially successful, business's share of the burden has increased significantly over the past few years.

The federal government regulates many aspects of business. For example, there is price regulation ~~for~~ transportation, dairy production, and long distance telephone service, as well as the setting of safety standards in the workplace and for hazardous waste disposal. These industries often are regulated by state or local governments as well.

According to the Small Business Administration, in 1988 the cost of economic regulation was estimated to be $50 billion and the cost of federal paperwork was approximately $100 billion. These burdens do not fall equally on all businesses: the proportionate cost of regulatory compliance for small firms is almost three times that for large firms.

Many companies have been forced to hire employees solely for the purpose of complying with federal paperwork and recordkeeping requirements; these additional employees add significantly to the costs of goods and services. Parenthetically, the result often is higher, less competitively priced U.S.-produced products.

To further address this critical problem, Congress also enacted the RFA to ensure that federal regulations do not unnecessarily or disproportionately burden small businesses. The law explicitly recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation.

The RFA mandates that the federal government review all regulations on which public comment is required by the Administrative Procedure Act, section

553(b), or any other law to determine whether maximum flexibility is being provided to accommodate the unique needs of small businesses. An "initial regulatory flexibility analysis" is required to identify: (1) the reasons that the agency is considering action; (2) the objectives and legal bases for the proposed rule; (3) the kind and number of small entities to which the proposed rule will apply; (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and (5) all federal rules that may duplicate or conflict with the proposed rule.

If the promulgating agency certifies that the rule does not exert a "significant full impact on a substantial number of small entities," a full regulatory flexibility analysis is not required. However, the agency still must perform some regulatory analysis to make such a determination.

For all final rules, the RFA requires agencies to publish a "final regulatory flexibility analysis" to: (1) summarize the issues raised by the public comments; (2) summarize the agency's assessment of those comments; (3) state any changes made in the proposed rule as a result of those comments; (4) describe each significant alternative to the rule consistent with the regulatory objectives; and (5) state why each alternative was rejected.

There is no separate judicial review for agency certifications or regulatory flexibility analyses. Intermediate review of any regulatory flexibility action is prohibited. However, it was the explicit intent of Congress that courts may review final regulations and that if an agency failed to perform a regulatory flexibility analysis or did an incomplete analysis, the court might then find that the rule was arbitrary and capricious. While the option of judicial review exists, this process is always time-consuming and very costly.

To illustrate the magnitude of the problem that small businesses face in complying with paperwork and regulatory requests, I will highlight several specific areas that impose unnecessary burdens on my company. These examples demonstrate the cumulative effect of regulatory and paperwork burdens on different functions of the same business.

## Section 89

As standard practice, our company carefully monitors new legislation and resulting requirements. Lancaster Laboratories learned that Section 89, which requires employers to conduct a complicated series of tests to prove that their health and other benefits plans do not discriminate in favor of highly compensated employees, was to be implemented on January 1, 1989. We viewed this seriously and took all necessary steps to be in full compliance. Our company incurred significant internal and external expenses in order to have our documents in compliance by that date. Now that we have incurred the cost, it appears that Congress recognizes how extreme Section 89 regulations are and that they should be changed. Nevertheless, to comply with this change will cost us additional dollars.

While Section 89 is extremely complicated to apply to a single business, Lancaster Laboratories also is engaged in one joint venture and is in the process of establishing another. These joint ventures fall under the "affiliated services" group requirements. The equivalency tests are so complicated to conduct that our company must have one benefit practices system for all three. This is senseless because living situations differ in Lancaster, Salt Lake City, and Houston where the ventures are located. Burdens include having our Pennsylvania-based insurance company extend services to each site because local insurance companies do not offer similar packages.

The Employee Retirement Income Security Act of 1974 (ERISA) also incorporated some of the same affiliated service group rules. Lancaster Laboratories worked for years to develop the financial stability to introduce a 401(k) plan with liberal benefits and profit-sharing. Now we are required to offer the same benefits to employees of our start-up companies, which have yet to make a profit. This has an adverse effect on employee morale.

Documenting that employees know all the benefits falling under Section 89 and ERISA added 43 pages to our Personnel Manual this year.

In the PRA clearance filing with OMB, the IRS estimated an average of 10 to 12 hours per company to comply with Section 89. This estimate does not cover even the minimum number of hours required by the very smallest employer. In addition to this unrealistic time estimate for comprehending the law, gathering data, and conducting tests, there are time burdens for collecting sworn statements from employees who have other medical coverage and for collecting information on former employees.

The complexity of the tests imposed by Section 89 and the 44 Federal Register pages of regulations that go with it are out of proportion to the legislation's stated goals. Other Chamber members have told us that Section 89 is the most "time-consuming, paper-producing nightmare" that they have ever seen. As one member wrote, "When you add Section 89 to the requirements of the Immigration Reform Act, Consolidated Omnibus Budget Reconciliation Act, health and safety regulations, affirmative action plans, etc., believe me, I am developing a mountain of paper."

## Affirmative Action

As an employer with more than 100 employees and a government contract of more than $50,000, Lancaster Laboratories is subject to an Affirmative Action Audit under the Office of Federal Contract Compliance Program. In 1988 we expended approximately 600 hours of staff time, at a cost of more than $8,500, preparing and facilitating this process. Incidentally, the final paperwork package weighed 13 pounds.

Our experience with this process was extremely negative. We pride ourselves on applying the spirit as well as the letter of the law in our equal opportunity efforts and have worked with social service agencies in our area to recruit and train minority and disadvantaged workers. The government auditor was not at all interested in good faith efforts but extremely interested in "nitpicking." For example, we followed the department's written regulations and typed a list of employees beginning with the lowest paid and moving to the highest paid. Our auditor preferred the reverse order (listing highest paid first), which necessitated staff working overtime.

In another example, Lancaster Laboratories was asked to determine the availability of minorities within areas in which we recruit to match those percentages in our work force. Obtaining that information is all but impossible, as our contacts with 41 recruiting sources, including vocational-technical schools, business schools, and science departments in colleges, demonstrated.

It is to the advantage of small business and the federal government to create contractual relations between the two. Unfortunately, the complexity of paperwork is often overwhelming. In our small business, we are forced to have one full-time staff contract specialist simply to work with legal aspects of these complexities.

Procurement

Two specific examples where businesses incur extraordinary paperwork burdens in the federal procurement process are regulations involving technical data rights and procurement integrity. While there are numerous other possible examples, these two are characteristic.

Technical Data Rights

The Department of Defense (DOD) interim rule on "Patents, Data, and Copyrights" has been revised several times over the past few years. Although this rule does not affect Lancaster Laboratories directly, I will describe briefly a portion of the history of this rule.

DOD requested clearance of its April 1, 1988 version of the rule but was advised by OIRA that pursuant to the PRA, any information collection requirements contained in the interim rule that went beyond those already approved for collection under OMB control number 0704-0240 could not be put into effect absent OMB approval. On October 17, 1988, DOD submitted to OMB a request to (1) withdraw its April 1, 1988 information collection submission and (2) obtain an emergency clearance for the information collection requirements contained in a new version of the interim regulation.

OMB subsequently advised DOD that because there was no clearance on its April 1988 version of the interim rule, none of its requirements could be put into effect. It should be noted, however, that according to a number of Chamber members, this version of the interim rule still appears in contracts awarded between April 1, 1988 and publication of the next version in October 1988.

On October 21, 1988, OMB published in the Federal Register notice of a public information collection for the latest version of the rule. On October 28, the next version of the interim rule was published for public comments. DOD's request for emergency clearance for information collection requirements contained in the October 28, 1988 version of the interim rule was granted. This clearance, however, did not reflect OMB's review of this information collection beyond recognition of the need to accommodate an emergency.

While the Chamber viewed the revised rule as an improvement over the seriously flawed interim rule issued April 1, 1988, the revision in no way lessened the extensive paperwork burden that compliance will entail. The Chamber is concerned that the additional time and expense necessary to comply with the rule, both for the government and industry, will not be cost-effective and will require resources far beyond any demonstrated need or utility to the government. The rule also fails to implement the President's objective of promoting commercialization of government-funded technologies; the failure reflects a reluctance to recognize the contribution of private funds to the development of technology and the economic and public benefit derived.

The rule creates an immense paperwork burden for all parties. Specifically, the DOD justification submitted to OMB for paperwork clearance estimates 16,560 responses annually for reporting/disclosures at 79.47 hours per response and 4,130 recordkeepers providing an estimated 240 hours each annually. This will cost the public approximately $34.6 million for reporting alone. This sharply contrasts with industry estimates of $90 million to $342 million. It is also industry's assessment that the recordkeeping burden is at least twice DOD's estimate. The Chamber would be pleased to provide specific examples to the Subcommittee upon request.

The Chamber urges OIRA to instruct DOD to revise the regulation to (1) comply with Congressional direction to balance the government's and contractor's interests; (2) incorporate the policy guidance in the President's Executive Order 12291; and (3) reduce the paperwork burden on the public. This revision can largely be accomplished by directing DOD to adopt the suggestions made by the Office of Federal Procurement Policy in its June 29, 1988 letter to DOD commenting on the April 1988 interim rule.

The Chamber also believes that the rule should state explicitly that the government will not acquire technical data or computer software (regardless of the source of the funding for development of an item, component, or process) unless the government has identified a specific need for such data that cannot be met through other means, such as through direct licensing or non-disclosure agreements. The regulation should also provide that the government will not acquire technical data and computer software for purposes of reprocurement if: (1) a substitute for the original item is commercially available and will meet the performance objectives or (2) performance specifications will provide sufficient information.

If these recommendations are followed, the Chamber believes that a reduction in the paperwork burden associated with this interim rule could be achieved.

## Procurement Integrity

A new federal procurement regulation on contractor ethics, which will significantly change the way all companies do business with the federal government, will take effect on July 16, 1989. This regulation implements the "Procurement Integrity" provision of the Office of Federal Procurement Policy Reauthorization Act of 1988 (P.L. 100-679). The new law prohibits contractors from obtaining source selection information that could be related to present or future contracts; it prohibits discussions of post-government employment, directly or indirectly with a government procurement official who is "personally and substantially" involved in the procurement; and it prohibits contractors from offering things of value to procurement officials. The law and its prohibitions apply to all contracts of all federal agencies, regardless of value.

In addition, the law imposes certain further obligations on contractors and their employees if the contract value exceeds $100,000. Contractors are obligated to provide written certifications that they are aware of the requirements of the law and that violations or potential violations have been reported. Individual employees must certify annually, and companies must certify before contracts are awarded.

The Chamber fully supports ensuring that federal procurements are conducted with the highest level of ethical standards. While the proposed regulation is intended to achieve this goal, the Chamber is concerned that it fails to provide clear, precise, and unambiguous guidance for the contracting community. Given the severity of penalties for noncompliance, it is essential to ensure that both government and industry personnel completely understand the regulation's restrictions and requirements.

The Chamber believes that the estimates of the annual reporting and recordkeeping burden are understated severely. The information burden estimates bear no relationship to the actual requirements. Signing a certification is only the last step. The estimates do not account for the extensive data collection process prior to this step. Specifically, the reporting burden is estimated to be five minutes per response; the recordkeeping/training burden is assessed to be 20 minutes per response. It is inconceivable that an individual or company would certify to the integrity of a bid or proposal in accordance with the terms of the interim regulation based upon such a limited review of supporting documentation. Further, an adequate ethics training program could not be reasonably accomplished in only 20 minutes.

Noncompliance with this regulation, whether inadvertent or intentional, could result in extremely severe civil, criminal, and contractual penalties, including suspension or debarment, contract termination, and profit recapture. Individuals could receive up to a $100,000 fine and five years imprisonment, and companies up to a $1 million fine. Responsible contractors and their employees who have begun to implement this new reporting and certification requirement believe that it requires multiples of the estimated time to comply.

The Chamber strongly urges OIRA to reevaluate and amend the estimated time burdens to achieve more realistic projections. It also recommends that OIRA require agencies to identify ways to reduce paperwork burdens before granting an OMB control number. The Chamber intends to submit comments on the May 11, 1989 interim rule on procurement integrity, recommending a number of modifications.

## Taxation

In the area of taxation, we identified several examples of laws or regulations that create a significant paperwork burden for individuals and small businesses. These examples also show how laws or regulations can act as a disincentive to investment in our economy.

One example involves the Uniform Capitalization Rules (IRS Code 263A). These rules require businesses to capitalize certain direct and indirect costs, based on a highly complex maze of regulations. Due to their extreme complexity, businesses simply may be unable to comply.

A second area of the tax law that should be reviewed for paperwork reduction is the Passive Activity Loss Regulations (IRS Code 469). These regulations establish standards for determining whether a taxpayer is materially participating in the conduct of a business. The IRS forms and implementing tax regulations are extremely burdensome to small business persons and other entrepreneurs.

## Environment

Laboratories must undergo a variety of tests and certifications to qualify for operation with the government. This synopsis describes some of the duplicative paperwork requirements of the process.

The Safe Drinking Water Act of 1979 provides general guidelines for qualifying laboratories for environmental testing at the federal level. The responsibility for "accreditation" has since been delegated to the states. Each state subsequently developed different programs and are unwilling in most cases to grant reciprocity. Therefore, in order for companies to conduct business in more than one state, they must undergo separate, duplicative accreditations. This paperwork burden is the result of misguided federal policy.

In addition, the Environmental Protection Agency (EPA) must qualify laboratories for hazardous waste analyses for Superfund. Rather than accept previously developed state reports, the EPA requires businesses to start from the beginning.

Commercial customers of laboratories consider the Contract Laboratory Program (CLP) -- which qualifies the laboratory for a government contract -- as an "accreditation" process. Therefore, many laboratories seek CLP contracts simply for credibility in the commercial marketplace. This process is extremely paperwork intensive. It is not unusual for a CLP laboratory report to have between 100-300 pages of supporting paperwork. Furthermore, trivial deviations in the report's preparation could lead to receipt of partial payment for services rendered.

Lancaster Laboratories presently employs five full-time persons working in a large lab -- now converted to a paper factory -- generating data packages that are required by several states, the federal government, and many commercial clients, due to EPA's standard-setting process.

A well-run laboratory with a good quality control and assurance system collects supporting documentation and archives the data so that it can be verified at any time. Lancaster Laboratories and the American Council of Independent Laboratories has worked for years to promote a nationally recognized accreditation system that would be technically sound but would not require excessive paperwork. He would welcome OIRA's support in this effort.

In addition, a more broad-based EPA requirement, the Superfund Amendments and Reauthorization Act of 1986, was passed by Congress in late 1986. While this law does not affect Lancaster Laboratories directly, it may have an impact on all manufacturers with Standard Industrial Classification Codes 20 through 39. A new program was originated as part of the reauthorization called the Emergency Planning and Community Right-to-Know Act (Title III). The purpose of the program is to inform communities and individuals of the chemicals present in their areas.

Concerns about the legislation's potential for excessive regulatory burdens were expressed by many in Congress. Representative Norman Lent (R-NY), a key sponsor of the Superfund Amendments, stated, "Although I support the concept of a community's right to know of the risks its businesses pose, I am concerned that the legislation, if misinterpreted, could result in any useful information being buried in an avalanche of unnecessary paperwork."

A key reporting requirement initiated under Title III is the Toxics Release Inventory Reporting. The first industry reporting under Section 313 of Title III is due July 1, 1989 and represents data from calendar year 1988. Companies are required to report for each of the 327 chemicals listed by EPA that are present in their facilities over threshold amounts. EPA Form R must be completed for each chemical. The form is 5 pages long and requires extensive data collection for accurate completion. EPA estimates that an average of 10 forms would be required for those companies required to report. Each form requires approximately 2 weeks of man hours to complete (this includes setting up the data base to collect the information for the completion of the form). More than 17,000 firms submitted more than 60,000 forms to EPA. Due to the extensive instructions (more than 15 pages long), many errors were found that could subject a firm to fines because the form did not contain complete information.

## Davis-Bacon Act

Another burdensome requirement involves the implementation of the Davis-Bacon Act. Although this does not impact Lancaster Laboratories directly, it does affect many Chamber members.

The Davis-Bacon Act requires that the local prevailing wage rate be paid to workers on federally financed construction, repair, and alteration contracts. Under this Act, employers are required to submit complete payroll records every week. Because of that requirement, approximately 11 million payroll records are submitted annually to the Department of Labor (DOL) at an estimated cost of 5.5 million hours of industry employee time. Furthermore, 5.5 percent of all DOL paperwork is generated by these reports. The DOL and Congressional Budget Office have estimated that $50 million to $100 million is spent on these reports by contractors; the cost is then passed along to taxpayers. This tremendous amount of paperwork discourages small businesses from bidding on contracts because they may have to hire additional clerical help or invest in new equipment to comply, or they simply may be intimidated.

## Summary

Although small businesses were intended by Congress to be a primary beneficiary of the PRA, its implementation has not resulted in their receiving the full benefits anticipated when it was passed. There have been very few instances in which an agency adopted, tiered, or simplified requirements for smaller entities, and there has very rarely been any exemption for small business. The Chamber offers the following recommendations:

- OMB should be encouraged to provide the necessary support to OIRA to ensure its ability to fulfill its oversight role of agency regulations.

- The PRA should be amended specifically to require that small business paperwork be targeted for at least a 20 percent net reduction, accounting for new and existing regulations.

- The PRA contemplated the establishment of a FILS, which would permit agencies, before imposing paperwork requirements, to determine the availability of the necessary information from existing paperwork requirements. This can only be accomplished through a government-wide information clearinghouse. To date, however, the FILS has not been implemented. Accordingly, an information clearinghouse should be established and agencies should be required to perform a comprehensive search for available information before proposing additional information demands on the public. Knowing what information is on hand will help to eliminate duplicative and unnecessary information gathering.

- The statute should provide explicit clarification on the scope of the clearance process. Many agency requests for information are made on an ad hoc basis and do not involve completion of a specific form. The Act should clarify the requirement for an OMB control number for this type of information request, which often is equally or more burdensome to businesses.

- In every government request for proposal or quotation package, the responsible agency should be required to certify that all requests for information have current and approved OMB clearance numbers.

- Agencies should be required to publish the results of the information clearance process in the Federal Register. Generally, the public only sees the initial notice of request for an OMB clearance number.

The Chamber appreciates this opportunity to present its views on this most important issue. I would be pleased to respond to your questions at this time.

MANUFACTURING
CREATES
AMERICA'S
STRENGTH

Testimony
on

PAPERWORK REDUCTION ACT REAUTHORIZATION

by
RICHARD M. PATTERSON
DOW CHEMICAL, U.S.A.

On Behalf of the
NATIONAL ASSOCIATION OF MANUFACTURERS

Before the
Subcommittee on Government Information and Regulation
Committee on Governmental Affairs
United States Senate

June 16, 1989

NAM

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## PAPERWORK REDUCTION ACT REAUTHORIZATION

## EXECUTIVE SUMMARY

In its testimony, NAM calls on Congress to reauthorize the Paperwork Reduction Act of 1980 (PRA) and continue the excellent work of the OMB and its Office of Information and Regulatory Affairs (OIRA). NAM points out that paperwork is an area that receives very little attention but is insidious in its impact on business and its ability to compete.

The PRA passed in 1980 was an attempt to instill good government practices and restrict the evergrowing paperwork burden. The regulatory scheme is so overlapping that a Joint Economic Committee study recalled where the steel industry was regulated by 27 different federal agencies. The administrative cost of federal regulation has grown from $7.3 billion in FY 1980 to $8.3 billion in FY 1990. Agency staffing is on the rise, from a low point of 101,000 in 1985 to 107,000 in FY 1990.

The continued growth was spotlighted in a 1988 OIRA report on the PRA when it noted that, for the first time in six reports, the paperwork burden had shown a net burden increase. This was triggered by an increase of 140 million hours, largely due to laws passed in 1986 and 1987.

The testimony points out significant new burdens being placed on business by IRS, EPA and SARA legislation.

# TESTIMONY OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON PAPERWORK REDUCTION ACT REAUTHORIZATION

## BEFORE THE GOVERNMENT INFORMATION AND REGULATION SUBCOMMITTEE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

June 16, 1989

Mr. Chairman, members of the subcommittee, I am Richard M. Patterson, Government Relations Manager, Dow Chemical U.S.A., testifying on behalf of the National Association of Manufacturers and its 13,500 member companies and subsidiaries.

The National Association of Manufacturers (NAM) strongly urges the reauthorization of the Paperwork Reduction Act (PRA) because it represents an attempt to continue good government practices in an area that receives very little attention but is insidious in its impact on business and its ability to compete effectively. Most regulatory schemes require some form of paperwork, be it the filling out of forms, the keeping of records, the posting of notices and/or responding to surveys. All these activities create costs that must be built into the cost base of a product. In the paperwork business, there are no "free lunches," only bills to be paid now or later.

The PRA of 1980 was the culmination of a long battle to alleviate the problems associated with the placing of information and recordkeeping requirements on business and institutions with little regard for the burdensome effect.

Two years after the report of the Commission, Congress passed landmark legislation to bring some rhyme and reason to the unending need and requests for information.

The NAM and its members are not against information requests for they recognize that government at all levels needs accurate and speedy information to operate. We also realize that the business community needs and uses the information generated by the government. Universities and libraries are also beneficiares and suppliers of information. One person's hassle is another person's bread and butter. Therefore, we need to strike a balance between the competing interests.

For the past nine years, OMB and its Office of Information and Regulatory Affairs (OIRA) have been in the unenviable position of being able to please no one in the struggle to regulate paperwork by attempting to make such requests less burdensome and more reliable. OIRA's efforts have paid off in some success and the agency merits praise for its attempts to reduce paperwork burdens and also for being sensitive to the reasonable and legitimate needs of government. The battle continues today and some reference to the early '80s will demonstrate how very little headway has been made and why the attempt to control paperwork is essential to our economic health and well-being. In July 1980, the Joint Economic Committee made an inquiry into conflicting and duplicative regulatory requirements affecting selected industries and found, for example, that the steel industry was subject to extensive regulation by 27 different federal agencies. The coal sector was heavily regulated by the federal government, with the coal industry reporting 12 departments and agencies as having some piece of the regulatory action. No doubt, the same regulatory maze can be found today, nearly nine years after that study. In fact, in May 1989, the Center for the Study of American Business, Washington University at St. Louis, Mo., found that the federal administrative cost of regulatory programs for FY '90 (after a small decline in the mid-'80s) has surpassed the total spent in 1980: $7.3 billion to $8.3 billion (FY 1990). Although staffing for agencies has dropped from a high of 118,000 in 1980 to a low point of 101,000 in 1985, the figure is on the rise again and stands at 107,000 in FY 1990. The regulatory maze is like a "phoenix," regenerating itself and growing bigger.

The growth of the regulatory scheme was spotlighted in OMB's Sixth Annual Report Under the PRA of 1980 issued in July 1988. The report states that "1987 marked the first year since the passage of the Paperwork Reduction Act that the ... net paperwork burden increased." The increase of some 140 million burden hours was largely due to congressional activity with passage in 1986 of the Tax Reform Act, the Immigration Reform and Control Act and the Superfund Amendments and Reauthorization Act. One may argue that these laws were essential to the country; however, it also could be argued that the good intentions and effects of these laws were undercut because of the quantum leap in paperwork generated by their passage. It is hard to understand how such a large increase could go unchallenged during the legislative process, especially in face of the standing rules of the Senate that call for a regulatory impact statement to be included in every report transmitted by a Senate committee. We understand that Standing Rule XXVI, Paragraph 11(b) requires a reporting committee to evaluate any direct regulatory impact, including paperwork, and to disclose such information in the report. Nevertheless the burden continues to increase.

Recent examples of such increases can be found in the Tax Reform Act of 1986, i.e. IRS code Sec. 89, requiring nondiscrimination rules for employee benefit plans. This section has caused a furor because of the increased compliance cost, especially its effect on small businesses. For example, Superior Technical Ceramic Corp., St. Albans, Vt., an NAM member, recently testified before the Senate Small Business Committee that with only 85 employees, an estimated compliance cost of $23,250, plus the cost of a staff position at $28,000 (plus 40 percent fringe package), the yearly total expenditure came to more than $62,000. As a percent of profit, operating capital and personnel available, such resource use is significant, and when multiplied by the many small businesses nationwide, one can appreciate the impact of this law. To comply with Sec. 89, employers must read and understand 200 pages of regulations, collect, analyze, maintain and update massive amounts of data and then conduct complex eligibility and coverage tests. Because of the burden, we have heard from members who are cutting back or terminating health insurance altogether in an attempt to avoid problems at a time when we are all concerned with the millions not covered by any insurance.

Let's look back at another area: EPA. Our members, both large and small, have complained about Form R, required by Title

111 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Form R had to be filed no later than July 1, 1988, but because of the form's complexity and length, many companies missed the deadline. NAM staff reports that, prior to the deadline, it received 1,000 telephone calls bitterly complaining of the following:

- o Disproportionate impact vis-a-vis cost, manpower, loss of production, etc.
- o Confusion with multilevel reporting; overlapping lists bewilder many small companies and add to likelihood of mistakes.
- o Difficulty in determining latitude and longitude.
- o EPA's way-off-the-mark estimate of time required to fill out Form R. Companies have had to hire consulting engineers and reduce production to complete this project. Some small companies spent several hundred hours or longer preparing the emissions data for Form R.

The reauthorization of the Paperwork Reduction Act is particularly important to corporations attempting to comply with everchanging federal income tax laws. Nearly annual legislation during the past decade has made the Internal Revenue Code increasingly complex. This problem is exacerbated by the emerging trend of Treasury Department regulations being used to supplant congressionally-written tax law. These two factors have resulted in a dramatically increasing volume of paperwork required for corporate tax compliance. For instance, according to the Office of Management and Budget, Internal Revenue Service tax reporting requirements during fiscal year 1987, necessary to implement the Tax Reform Act of 1986, were responsible for about 117 million hours of increased paperwork burden for taxpayers. During that year, the Treasury Department was surpassed only by Department of Justice for increased paperwork volume.

The Paperwork Reduction Act has been useful. Recently, it helped achieve a 500,000 hour reduction in paperwork burden for taxpayers resulting from changes made in the 1404ES form. Simplification was achieved by replacing the "zero bracket amount" with a standard deduction option on the "Estimated Tax for Individuals" form. Although this does not directly affect corporate taxpayers, it is NAM's hope that comparable continued, effective use of the act would spare corporate taxpayers unnecessary, costly and duplicative paperwork and form-filing. In this regard, NAM commends the OMB for establishing, under the Paperwork Reduction Act, the Treasury Department's Tax System Redesign project. This project is designed to speed the processing of returns through electronic filing and other system improvements. If successful, this program should help reduce the time needed to resolve taxpayer problems and improve the Service's taxpayer assistance ability.

NAM believes simplicity and stability are important goals in developing tax policy. Paring down and preventing significant new paperwork requirements for tax compliance would free valuable corporate resources for more productive and growth-producing activities. Both statutes and supporting regulations should improve--not further complicate--the rules for administration and collection of taxes, and the Paperwork Reduction Act should help bring us closer to this ideal.

If U.S. industry is to become more competitive in the domestic and international markets, we will have to look to Congress to help reduce the squandering of our finite resources. It is for this reason that we seek the reauthorization of the Paperwork Reduction Act with the following recommendations:

(1) That the Office of Information and Regulatory Affairs, as the review and management organization for the Paperwork Reduction Act, be reauthorized for five years rather than the present three years;

(2) That the regulatory agencies review their paperwork requests to assure conformity with both the letter and intent of the Paperwork Reduction Act;

(3) That OMB regulations requiring the agency to print on the form an estimate of the burden hours to complete the form be made a statutory requirement, and

(4) That if the United States is serious about improving the competitiveness of U.S. industry, that reporting committees of the Senate comply with Standing Rule XXVI, Paragraph 11(b), which requires the evaluation of the direct regulatory impact, including paperwork of the report, and to disclose such information in the report.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

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The Honorable Jeff Bingaman
Chairman
Subcommittee on Government Information
and Regulations
U. S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Please allow me this opportunity to provide the following information for submission in the official hearing record for the June 12, 1989, subcommittee hearing on the reauthorization of the Paperwork Reduction Act.

Specifically, the Internal Revenue Service (IRS) wishes to amplify the Government Accounting Office (GAO) statement pertaining to the systems modernization effort of the IRS. The brief reference to IRS unfortunately could leave the impression that IRS has not yet produced a plan to guide its modernization efforts.

A comprehensive Management Plan was developed and issued in May, 1988. The Management Plan contains a master plan for IRS systems modernization endeavor and outlines both an interim and target technical architecture. As referenced in the October 1988 GAO Report, "Managing IRS: Actions Needed to Assure Quality Service in the Future," the Department of the Treasury approved the overall direction set forth in this plan.

Currently, the IRS is close to completing refinements of both the interim and target architectures to identify a system which is cost efficient and provides the best possible service to taxpayers.

The IRS is using an evolutionary approach in modernizing its tax processing system. To minimize risk and use resources effectively, the modernization effort will be accomplished in modular steps over a ten year period. Each new system will be operated simultaneously with the current system, ensuring the continuity of tax processing operations.

In the long term, the updated system will vastly improve the quality and timeliness of service to taxpayers by providing IRS personnel the capability to rapidly access taxpayer information. Moreover, the modernized system will contain every possible security measure to protect taxpayer information from unauthorized access.

Sincerely,

John L. Wedick, Jr.
Acting Commissioner

The Johns Hopkins University

Office of Sponsored Projects
John Dearden, Director

Baltimore, Maryland 21218
(301) 338 8140

June 22, 1989

The Honorable Jeff Bingaman
U.S. Senate
Washington, D.C. 20510

Dear Senator Bingaman:

Please let me thank you for the opportunity to provide testimony to the Subcommittee on Government Information and Regulation during your hearing on the Paperwork Reduction Act (PRA) and the Reauthorization of the Office of Information and Regulatory Affairs (OIRA) in OMB in that Act. As the Director of the Central Office for administration of sponsored research at The Johns Hopkins University, I have frequently observed and participated in activities involving the Act and OIRA. In my experience, The Act and OIRA have proven to be valuable and helpful in promoting research productivity and cost-effectiveness in federally-sponsored academic R & D and related activities by fostering a balanced approach in federal regulation and information requirements. In that context, the Act and OIRA clearly contribute to our Nation's ability to complete internationally in science and technology. Thus, I strongly urge reauthorization of OIRA with full retention of its information management and regulatory oversight responsibilities and authorities under the Act, and I also urge that the present provisions of the Act, such as "Section 3512 - Public Protection," be retained in full. I shall provide examples later as substantive illustration for these recommendations.

Johns Hopkins is an extremely research-intensive university, and its enterprises extend over virtually the entire spectrum of modern academic research and training activities. Our primary mission and first-order function is to produce new knowledge and highly-skilled professionals in science and technology. This necessarily involves a great reliance upon federal support, as the federal government is overwhelmingly the primary resource for funding of U.S. academic research, and Hopkins is ranked first among all university recipients of federal research funds. Thus, it is not surprising that at Johns Hopkins, we are very aware of the impact that federal regulatory, administrative and information requirements have on research productivity and cost. Our research is funded by many different sources within the federal government, and these often overlap in complicated ways. We deal with dozens of different federal agencies, offices, and programs, and each has particular needs and objectives. Each has legitimate regulatory functions to perform in its stewardship of public funds and to assure compliance with agency mission requirements and national policy objectives.

Agency implementation of these regulatory functions relies primarily upon requiring information development, collection and reporting by funding recipients and regulated entities. To the degree that such requirements are collectively or individually duplicative, not cost-effective or unnecessary, they constitute non-productive consumption of federal resources, and force research personnel to expend significant efforts on administrative matters rather than scientific or technical activities.

Fortunately for science as well as other endeavors, The Paperwork Reduction Act recognizes that federal information requirements are the implementing means to substantive regulatory ends, which can collectively impose excessive burdens upon regulated activities, and that it is thus necessary to manage federal information requirements and the regulatory process as an integrated system. As a means to that end the Act requires federal agencies to solicit and obtain public comments on the choices involved in achieving regulatory objectives; OIRA functions to require the agencies to meet that statutory requirement. Thus, OIRA serves to preserve and protect the integrity of the public comment process required by the Act. Specifically, OIRA is charged with the responsibility for assuring that federal information policy and regulatory requirements are necessary, non-duplicative, and cost-effective in the government-wide context.

Through the information management and regulatory review functions, OIRA also functions as a relatively neutral third party to which comments regarding present or prospective agency information and regulatory requirements may be directed by the public, thus strengthening the effectiveness of public input in the regulatory process. And the Act's focus on information development, collection and reporting requirements virtually assures the opportunity for public comments to be heard outside of the specific issuing agency regardless of the substantive thrust of regulations. That fact, when coupled with the public protection provisions of the Act and the authority of OIRA to require agency modifications to regulations, has provided to the affected public long-needed balance and equity in the federal regulatory system.

An example of the value of the Act and OIRA is the recent instance in which a major federal funding agency (PHS) proposed to issue regulations regarding possible misconduct in science. Although well-intended, the regulations would have required establishing systems for reporting and investigating all alleged or actual failures to "comply with federal requirements affecting research." Since such requirements by definition operate through existing regulations, the proposed rule would have been exceedingly redundant and, ultimately, detrimental to research productivity and cost-effectiveness. OIRA brought this to the attention of the issuing agency, and has recommended that the rule be revised accordingly.

**(Page Three of Letter to Senator Bingaman)**

In another instance specific to Johns Hopkins, the public protection provisions of the Act operated in a beneficial manner. A field office of a major funding agency (DOE) requested a large amount of detailed information, in a unique format, which had largely been provided regularly by the University in different format to the Small Business Administration. Since the effort to comply with the Agency request would have been very substantial and ongoing, this Office questioned the need of the Agency for that information as well as its authority to make the request, and refused to provide that information since the Agency could presumably acquire it from SBA. The Agency responded by threatening to revoke its letter of credit and engaged in other acts of harassment. By invoking the public protection provision of the Act to OIRA, the Agency was ultimately persuaded to desist.

Thus, in conclusion allow me to reiterate that the Act and OIRA have demonstrated their value in areas critical to research productivity and cost-effectiveness, and thereby contribute to critical national competitiveness in science and technology. Allow me also to restate my support for the reauthorization of OIRA with its present responsibilities and authorities fully intact, and to urge that the present provisions of the Act be completely retained or even strengthened. Finally, allow me to also suggest that you consider incorporating in the Act requirements to foster better and wider federal information dissemination practices, both within the government and to the public.

Thank you again for the opportunity to provide this testimony.

Sincerely,

John Dearden
Director
Office of Sponsored Projects
The Johns Hopkins University

JD:slj

are lightly, moderately, or heavily oiled. Booms at state and private fisheries are in place and functioning satisfactorily, the report said. A report from Alaska's division of emergency services, also dated May 2, said oily water emulsion and mousse are being collected throughout impacted areas of Prince William Sound and in the Gulf of Alaska, "but at slower rates than envisioned.

"Large amounts of debris in mousse patches hamper conventional methods," the report said. "In the lower Kenai Peninsula area, the majority of removal is being done manually with shovels and buckets."

The report said 59 vessels, plus the Soviet skimming vessel *Vaydaghubsky*, were performing recovery and support activities.

On wildlife impact, the report said 319 birds and 139 otters were at the Valdez cleaning center; 82 birds have been released. The report said 2,421 birds and 437 otters have been reported dead, but added that the figures represent only a small percentage of birds and animals actually affected by the oil spill.

***Hazardous Waste***

## MAJOR DISAGREEMENTS BETWEEN OMB, EPA BLOCK CORRECTIVE ACTION RULE; DINGELL OBJECTS

Fundamental disagreement between the Office of Management and Budget and the Environmental Protection Agency has blocked for seven months a proposed rule that would dictate hazardous waste cleanups, an EPA official told BNA May 3.

The official said that OMB's interpretation would allow "hazardous waste facility operators to just walk away from the facilities, turning [operating facilities] into superfund sites."

The proposed corrective action rule would affect owners and operators of operating facilities that treat, store, or dispose of hazardous wastes. The rule, which would determine when and how the facilities clean up releases of hazardous wastes, is required under the Resource Conservation and Recovery Act. It has been before OMB since Oct. 11, 1988.

Robert Grady, OMB associate director for natural resources, energy, and science, said May 3 that there were "genuine disagreements on the merits" of the rule. He refused to predict when it would be released. (See related article, this issue.)

Because of the holdup at OMB, Rep. John D. Dingell (D-Mich) has requested a wide range of internal documents and background material from EPA in an April 18 letter to Administrator William K. Reilly.

In his letter, Dingell charged that the delay was "adversely affecting" RCRA cleanups.

Its effect, Dingell said, was to stall "clear guidelines for site remediation." He added, "Many companies may be unwilling to initiate cleanup measures and a state may be reluctant to apply to the federal government to take over corrective action responsibilities."

### OMB Exceeds Authority, Some Claim

An aide to Dingell told BNA the requested material may be used to assess claims that OMB is exceeding its authority under the Paperwork Reduction Act, which is up for reauthorization in the fall. Rather than examining regulatory burdens with an eye to governmental efficiency, the aide said, OMB has been delaying and striking down portions of regulations that affect health and the environment because they may be too onerous for business.

In an April 28 letter to Reilly, Jay Plager, OMB administrator of the Office of Information and Regulatory Affairs, spelled out five areas of concern in the corrective action proposal:

▸ Remedy selection—OMB questioned if EPA reliance on permanent remedies in the rule will limit effective short-term solutions and raise costs;

▸ Point of compliance—OMB questioned if the compliance point for ground water contamination should be at the fence line of the facility rather than the boundary of the waste unit itself, as EPA proposed;

▸ Cleanup target—The draft set lifetime cancer risk of from one in 10,000 to one in 10 million, and OMB expressed concern that the high limit was too stringent;

▸ Cost—OMB said EPA's estimate of $7.4 billion for implementing the rule may be too low; and

▸ Benefits—OMB called for EPA to provide more specific information concerning benefits from the rule.

OMB also suspended its review of the rule while EPA provided answers to these questions, according to Plager's letter.

### Costs Traded For Protection, EPA Official Says

An EPA official who is involved in the corrective action rule development, but did not wish to be quoted by name, told BNA that OMB was willing to "trade cost for protection of health and the environment."

The official said EPA has interpreted RCRA as making protection of health and the environment paramount and by far exceeding the importance of cost.

In outlining EPA's and OMB's conflict over the rule, the EPA official said that for OMB, compliance would not be required until waste had migrated off-site. EPA felt that this would be too late to provide adequate control. Under OMB's interpretation, the EPA official said, an operator who had contaminated a site would not be required to clean it up until after the waste had affected the environment and community outside the facility.

The official also said OMB had endorsed a position that would in effect allow an operator and owner of a contaminated facility to put off a cleanup "forever."

The timing requirement coupled with the off-site migration allowance, the official said, would allow an operator to run a contaminated facility for as long as possible, creating contamination beyond a single "waste management unit" but keeping it within the facility boundary. The official warned that an operator/owner then could shut the facility down, close down the business, and leave it—in effect turning the facility into a superfund site.

### 'Eating Sludge, Slipping In A Pond'

Concerning when cleanup targets would trigger source contamination controls, the EPA official said OMB would require direct contact with contamination by the public before cleanup efforts would be mandated.

Under OMB's interpretation, the official said, "People would have to be eating sludge or slipping into a hazardous waste pond" before an operator would have to begin a corrective action.

The aide agreed with OMB that the disagreements between the two agencies were "fundamental."

In his letter, Dingell asked Reilly to supply:

▸ The draft corrective action rule supplied to OMB;

▸ Copies of all written documents exchanged between OMB and EPA over the rule; and

▸ Copies of all internal EPA documents, staff briefing papers, telephone logs, and other materials affecting the rule.

*General Policy*

## OMB OFFICIAL PROMISES END TO RULE DELAYS, BUT RCRA RULE STILL AT AGENCY AFTER SEVEN MONTHS

Delaying tactics will not be used by the White House Office of Management and Budget in disputes over rules and regulations with the Environmental Protection Agency, a high-level OMB official said May 3.

But the official, Robert Grady, OMB associate director for natural resources, energy, and science, refused to say when a major EPA rule that has been at OMB for seven months would be released.

The rule, which would require corrective actions at Resource Conservation and Recovery Act-permitted facilities, is the source of a growing controversy between EPA and OMB. (See related article in this issue.)

Grady said he could not say when the rule would be released from OMB's review. "There is genuine disagreement on the merits" of the rule, he said.

Grady, speaking at a luncheon of the environment, energy, and natural resources section of the D.C. Bar Association, promised a "new direction" in OMB's review of major agency rule-making.

The "new direction" has been ordered by OMB Director Richard Darman, Grady said. Darman told top OMB officials that they may disagree with other federal departments over a rule, but OMB is not to use delay as a way of stopping the rule.

OMB has been criticized for holding up rules well past the 60-day review period. Most recently, the House Energy and Commerce Subcommittee on Oversight and Investigations released a report accusing OMB of weakening and delaying EPA's rule to guide superfund cleanups (19 ER 2459).

Grady said that Darman has instructed that parties disagreeing over a rule meet and "try to hash it out" when "genuine disagreement exists."

### No Cabinet Seat For EPA

Grady, who worked as a speech writer and environmental adviser for President Bush during the campaign, also touched on a wide range of issues facing the administration as it passes its first 100 days.

Elevating EPA to Bush's Cabinet is "unlikely at the moment," Grady said. Bush "would like to do it," Grady said, but the president also feels very strongly that the size of the Cabinet should be reduced.

However, in the Bush administration, EPA is playing a "front and center role" with EPA Administrator William K. Reilly attending all of the Cabinet meetings and having ample access to the president, Grady said.

Grady declined to discuss what President Bush will propose in his expected package to reauthorize the Clean Air Act. He said the president will be presented with a range of options so that he can offer a package that provides maximum protection of the environment with minimum disruption of the economy, Grady said. He said the president hopes to send legislation to Capitol Hill by the end of May.

Grady also defended Bush's fiscal 1990 budget request, which cut EPA spending to less than what was appropriated for fiscal 1989. He said that Bush's specific proposals for spending more money on clean coal technology, nuclear weapons plant cleanups, and conservation efforts total more than $1.5 billion over five years.

Grady also said that Bush is well aware of the growing public interest in environmental issues. He said he recently met with Robert Teeter, Bush's former pollster and campaign strategist, who reported that new data show Americans are growing more concerned about the environment.

*Litigation*

## PESTICIDE MANUFACTURERS CAN BE HELD LIABLE UNDER RCRA, CERCLA FOR FORMULATOR'S ACTIONS

Pesticide manufacturers who hire a contractor to turn technical-grade pesticides into commercial products may be liable under both the Resource Conservation and Recovery Act and the superfund law for cleanup of environmental contamination at the contractor's plant, the U.S. Court of Appeals for the Eighth Circuit ruled April 25 (*U.S. v. Aceto Agricultural Chemicals Corp.*, CA 8, No. 88-1580, 4/25/89).

Iowa and the United States filed a $10 million cost-recovery suit against eight pesticide manufacturers under RCRA, also stating claims against six of the manufacturers under the Comprehensive Environmental Response, Compensation, and Liability Act. The governments alleged liability based on the defendants' contracts with Aidex Corp., which operated the contaminated site, a pesticide formulation facility in Mills County, Iowa.

Following specifications provided by the manufacturers, Aidex mixed the manufacturers' active ingredients with inert materials to produce commercial-grade pesticides, which it then packaged and shipped back to a manufacturer or directly to customers of the manufacturer.

Aidex declared bankruptcy in 1981, the appeals court said.

The governments alleged that this business arrangement, a common practice in the pesticide industry, constituted "arranging for" the disposal of hazardous substances under CERCLA and "contributing to" the handling, storage, treatment, or disposal of hazardous wastes under RCRA because, the governments argued, the generation of pesticide-containing wastes is an "inherent" part of the formulation process contracted for by the defendants.

Ruling on defense motions to dismiss, the U.S. District Court for the District of Iowa held the defendants could be liable under the superfund law, but not under RCRA (*U.S. v. Aceto Agricultural Chemicals Corp.*, 27 ERC 1388, 1988). The Eighth Circuit found the governments' allegations sufficient to withstand dismissal motions under both statutes.

In a 23-page opinion, the appellate court said that in light of the need to give CERCLA and RCRA a liberal interpretation, there is no persuasive reason to distinguish between "arranging for" and "contributing to" as liability-triggering acts.

### CERCLA Link Addressed First

The United States and Iowa claimed that pesticide formulation will automatically produce pesticide wastes, and that the six defendant companies had essentially arranged for Aidex to both formulate and dispose of the wastes. This was adequate to impose liability under CERCLA for response costs, according to the governments.

It is also important to recognize that the six pesticide manufacturers owned the technical-grade pesticide, the work in progress, and the commercial-grade pesticide product, the governments said.

In response, the six companies argued that Aidex was hired to formulate and not to dispose of pesticides, and that to interpret the arrangement otherwise would lead to "limitless" liability for pesticide manufacturers.

The Eighth Circuit declined to adopt the narrow interpretation of arranging for disposal of waste espoused by the six defendant companies. A "liberal judicial interpretation" is appropriate in determining the meaning of language in CERCLA imposing liability on people who arrange for the disposal of hazardous substances, the appeals court said.

Part of Congress' intent under CERCLA was to impose liability on those responsible for harmful conditions created

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U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

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PHONE (202) 225-4441

April 18, 1989

The Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

During proceedings for your confirmation, the Senate Committee on Environment and Public Works expressed concern about interference by the Office of Management and Budget (OMB) with the Environmental Protection Agency's proposed corrective action rule under the Resource Conservation and Recovery Act (RCRA). On February 1, 1989, you responded to the Senate Committee as follows:

> "The proposed rule for corrective action at Solid Waste Management Units has been undergoing review by the Office of Management and Budget since October 7, 1988. I understand that the Agency is working closely with OMB to answer the few remaining concerns. If OMB has not completed its review by the time I am sworn in as Administrator, I can assure you that I will take necessary steps to quickly resolve the remaining issues and have the rule published promptly."

However, now more than two months later, the Office of Management and Budget is continuing to seek major substantive changes in the EPA's proposed rule. This interference is particularly troubling because the corrective action rule is one of the most significant EPA hazardous waste regulations.

Moreover, delay in the publication of this rule is adversely affecting this crucial RCRA cleanup program. Without clear guidelines for site remediation, many companies may be unwilling to initiate cleanup measures and States may be reluctant to apply to the Federal government to take over corrective action responsibilities.

The Honorable William K. Reilly
April 18, 1989
Page 2

In furtherance of the Subcommittee's oversight responsibilities under Rules X and XI of the Rules of the U.S. House of Representatives, the Subcommittee requests the following information in order to clarify the role of OMB in the corrective action rulemaking:

(1) a copy of the draft proposed corrective action rule submitted by EPA to OMB in October 1988;

(2) copies of all written documents exchanged between EPA and OMB officials relating to the draft proposed rule;

(3) copies of all documents, including but not limited to, notes, agendas, and activity reports, which relate to meetings, discussions or telephone conversations between EPA and OMB officials concerning the draft proposed rule;

(4) copies of all Agency documents, including but not limited to, briefing papers, agendas or memoranda, relating to staff briefings of EPA officials about OMB's review of the draft proposed rule; and

(5) a list of all meetings, discussions, and telephone conversations between EPA and OMB officials concerning the draft proposed rule, including the names and titles of all officials involved in such oral communications, the date of such communications, and the issues discussed.

Please provide the requested information no later than the close of business on Monday, May 8, 1989. If you have any questions concerning this request, please contact Subcommittee Counsel Debra Jacobson at 225-4441. Thank you for your cooperation.

Sincerely,

John D. Dingell

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

JDD:DJdes

DAILY REPORT FOR EXECUTIVES

ROUTE TO

DER NO. 106 • WASHINGTON, D.C. MONDAY, JUNE 5, 1989

## TODAY'S SUMMARIES

**Job Growth Slowed Sharply in May** — The civilian unemployment rate dipped from 5.3 percent to 5.2 percent in May, but job growth continued to slow and manufacturers cut back on the number of jobs for the second month in a row, the Labor Department's Bureau of Labor Statistics reports. "The labor market certainly has slowed, there's no doubt about that," BLS Commissioner Norwood tells the Joint Economic Committee. . .In financial markets, the report is seen as further evidence that the economy is softening and sparks speculation that the Federal Reserve will soon move to lower interest rates slightly. Southwest Bank of St. Louis announces a cut in its prime lending rate to 11.0 percent from 11.5 percent—a move that is expected to be followed by other U.S. banks. ................ **N-1, A-15**

**OMB Rejects Or Holds Up EPA Rule Proposals** — The Office of Management and Budget discloses its strong disagreement with the Environmental Protection Agency on six proposed rules. In four letters just placed on the public record, OMB rejects or suspends its review of various EPA emission control proposals. The OMB criticisms hit EPA rule proposals on volatile organic compound emissions, on refueling vapor emissions, on leak and liner detection requirements for hazardous waste land disposal permits, and on hazardous waste incinerator standards for toxic metals. With respect to the suspensions, OMB says EPA has failed to respond to OMB inquiries, and for the rejections OMB argues that the costs outweigh the benefits. ........................................................ **A-18**

**Section 89 Repeal Estimated To Lose $174 Million In FY 1989, 1990** — The Joint Committee on Taxation staff has estimated that repeal of widely criticized Section 89 employee benefit nondiscrimination rules would lose $174 million in fiscal 1989 and 1990, an estimate significantly lower than critics of the rules had expected, a Senate tax aide says. JCT aides decline to confirm the estimates. Separately, Sen. Kasten announces plans to offer a floor amendment to the fiscal 1989 supplemental spending bill (HR 2072) June 6 to repeal Section 89. ............................ **G-2**

**Senate Debate On FY 1989 Spending Bill Continues** — The Senate continues debate on a $3.3 billion fiscal 1989 supplemental spending bill (HR 2072), but final passage is not expected before June 6. The administration, meanwhile, expresses support for the Senate version, which does not include funding for anti-drug programs contained in the House bill. During consideration, the Senate rejects an amendment to increase taxes on cigarettes, beer, and distilled spirits in order to raise additional revenues for anti-drug programs. .................................................................. **G-2**

### TEXT

IRS advance Notice 89-60, relating to additional integration rules for qualified retirement plans ................................................................ L-1

IRS advance Rev. Rul. 89-76, relating to ESOP loans ........................................ L-8

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to proceed with *both* systems," they wrote. The letter points out that the two systems would cost a combined $47 billion "at a time when we face a huge deficit and the Pentagon is confronting many years of level or declining budgets."

In the House, Reps. Martin Olav Sabo (D-Minn), Barney Frank (D-Mass), Vin Weber (R-Minn), John Rowland (R-Conn), Andy Ireland (R-Fla), Jim Moody (D-Wis), Ed Markey (D-Mass), Charles Stenholm (D-Texas), and Lane Evans (D-Ill) have launched a campaign to stop further funding of the Midgetman on grounds of affordability. The FY 1990 budget request contains a relatively modest $100 million for the program, an amount that would double in FY 1991.

The congressmen, in a May 23 letter to their House colleagues, contend that the nation cannot afford and does not need two missiles, and that since the MX is already well into production whereas the Midgetman is still on the drawing board, it would make more sense to halt the Midgetman.

The House and Senate Armed Services Committees tentatively had planned to draft the defense bill in mid-June, but the timeframe appears to have slipped until late June or early July.

### *Defense Management Review*

Meanwhile, Reps. Les Aspin (D-Wis), chairman of the House Armed Services Committee, and Mavroules, recently sent President Bush a "checklist of critical actions that must be addressed in the DOD acquisition management review."

According to the letter, four areas must be addressed if the Packard Commission recommendations are to be fully implemented:

- Reinforce the authority of the under secretary of defense for acquisition;
- Insist on a system that makes rational trade-offs between military requirements, cost and performance;
- Simplify the regulatory environment; and
- Train and retain qualified procurement personnel without excessive reliance on consultants.

The letter states that the first two USD(A)s, Richard Godwin and Robert Costello, were able to establish the working organizations necessary to implement the formal mandate of Packard, but "the spirit of what the Packard Commission intended has yet to be fulfilled."

The defense management review was commissioned by President Bush Feb. 9. Bush requested the review to determine what steps should be taken to improve the acquisition process and Pentagon management and to fully implement the Packard Commission. The review has been headed by Paul Stevens, whom Cheney brought from outside DOD, but procurement officials within the Office of the Secretary of Defense have complained that they have had very little input into the review and that it is being kept under close wraps.

The report is due to be sent to Defense Secretary Richard Cheney this week. Cheney will then forward the report to the president.☐

### *Environment*

## NEW SPATE OF OMB LETTERS REJECT EPA RULES ON VARIETY OF EMISSION CONTROL PROPOSALS

In a series of letters just put on the public record, the Office of Management and Budget has disclosed its strong disagreements with the Environmental Protection Agency on six proposed rules.

The four OMB letters reject, or suspend review, of EPA proposals on:

- ✓ Two draft final rules establishing new source performance standards for volatile organic compound emissions for air oxidation and distillation processes
- A draft proposed rule limiting volatile organic compound emissions from reactor processes in the synthetic organic chemical manufacturing industry.
- ✓ A draft reproposal of a notice of proposed rulemaking to require automobile manufacturers to install onboard control equipment to limit refueling vapor emissions. April 18
- ✓ A draft proposed rule on leak and liner detection requirements for hazardous waste land disposal permits. April 10
- ✓ A proposed amendment to hazardous waste incinerator standards for toxic metals, hydrogen chloride, and total unburned hydrocarbons. Feb. 23

The letter on hazardous waste incinerators is the oldest and most extensive of the letters to suddenly appear in the book of written communications to agencies kept by OMB's Office of Information and Regulatory Affairs. There have been previous reports on its contents.

The other three letters date from April, but also were recently added to the file, and their messages have not been known.

In two cases—onboard controls and liner and leak detection—the letters announce that OMB is suspending its review until EPA reacts to previous oral criticisms from OMB staffers. The suspension procedure was established by OIRA administrator Jay Plager, who signed all the letters. The suspension alternative is seen as an alternative to formal rejection of agency proposals, and as a way to "stop the clock," thus avoiding the appearance that OMB is delaying approval of the rule. OMB reviews all agency rule proposals and is sometimes criticized for holding up rules, a charge OMB officials say is much exaggerated.

Regarding the onboard rule, Plager advised EPA that the two months had passed since EPA staffers agreed to submit a separate rule dealing only with the related issue of setting limitations on evaporative emissions. Plager said he would begin the review of the onboard proposal again when EPA submits its evaporative emissions proposal and when the Transportation Department completes a study of safety issues concerning the onboard controls.

The choice between onboard controls and controls on gas pumps was highly controversial toward the end of the Reagan administration when former EPA administrator Lee Thomas unsuccessfully sought to push the onboard rule through over OMB objections. The issue may be addressed by President Bush in his clean air proposals expected out this week.

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Regarding leak and liner detection requirements for hazardous waste land disposal permits, Plager said EPA has not replied to OMB's October request for information. Among other things, he wrote, OMB asked about the estimated number of facilities to be covered by the rule. Again, Plager suspended review.

Plager flatly rejected EPA's two draft final rules establishing new source performance standards for volatile organic compound emissions for air oxidation and distillation processes, and its draft proposed rule limiting volatile organic compound emissions from reactor processes in the synthetic organic chemical manufacturing industry.

All were inconsistent with the regulatory principles in Executive Order 12291, according to Plager's two-page letter. Evidently the battle between the two agencies is long-running, because Plager said EPA's proposals were resubmittals that failed to respond adequately to OMB concerns raised in late 1986.

Plager said the rules would impose control costs "substantially higher than both the costs typically incurred under other [new source performance standards], and the available estimates of the likely estimates." He said the $2,650 per megagram cutoff adopted in the rules "is roughly four times published estimates of the likely benefits of controlling volatile organic compound emissions."

Further, Plager wrote, "While EPA has asserted that these measures yield important air toxic benefits, EPA has not demonstrated that the control costs for each emissions stream bear some relationship to the likely benefits of toxics control."

The longest and oldest of the letters is the six-page February letter about incinerators standards, which concluded that "this draft rule may not represent the most efficient use of the nation's pollution control resources."

Plager's letter said the risk of death from toxic metal emissions from the riskiest hazardous waste incinerator is less than the chance of being hit by lightning. Plager further argued that risk-cost tradeoff "compares unfavorably with other federal regulatory actions, falling far out of the range of resources normally expended to reduce health risks."

EPA's projected annual cost of the total rule was $6.4 million annually, of which $2.9 million were attributed to the toxic metal portion of the rule. Plager said the rule would mean a cost of $288 million per statistical cancer case avoided, noting that EPA has used a range of $300,000-$700,000 per statistical cancer case as a measure of the willingness-to-pay for a reduction in health risks. He concluded, "This rule exceeds the range of costs generally accepted for risk reduction regulations by such a great margin that we believe you should examine further the likely benefits of the draft proposal.☐

*Contract Policy*

## DEFENSE INDUSTRY PRESSES FOR PROCUREMENT REFORMS AT HEARING

Members of the defense industry last week appealed to a Senate Armed Services subcommittee to reform the procurement process in several respects—including greater emphasis on quality, wide use of commercial items, and streamlined program management.

During a June 2 hearing before the Armed Services Subcommittee on Defense Industry and Technology, Philip Odeen, of Coopers & Lybrand, called for revising the Competition in Contracting Act to emphasize quality over price. Odeen said that CICA should be amended to permit contracts to be awarded, based on initial proposals without discussions (i.e., without best and final offers), to an offeror whose proposal is most advantageous to the government in terms of quality, price, and other factors.

However, he admitted that changing CICA alone will not solve the quality vs. price problem. He indicated that the contracting community must come to recognize the value of quality.

Odeen, who chairs the Professional Services Council, said that a "bid protest syndrome" has arisen among the professional and technical services sector. Disappointed bidders who are convinced that their proposals are superior to the winning proposal in terms of quality are in many cases filing bid protests out of frustration that the award was based on low price alone, he explained.

To avoid more protests, DOD must do a better job of spelling out in a request for proposals what it wants by way of quality, Odeen said. Otherwise, contracting officers will continue to base awards on price alone. Bid protests have increased dramatically in the professional and technical services sector between 1985 and 1988. Cases filed increased by 150 percent, to over 200 cases, during that time, Odeen said.

### *Conflict Of Interest*

Frank Lewis, senior vice president of the Harris Corp., told the panel that "the government is simply not getting the best people" and is in fact, "losing them at an increasing rate" because of the new, tighter post-government employment restrictions in the Office of Federal Procurement Policy reauthorization act.

Lewis urged Congress to consider consolidating the many conflict of interest statutes to eliminate "inappropriate restrictions which are preventing people from entering government service."

Lewis also called for a number of procurement reforms, among them:

- Prohibiting the use of fixed price development contracts on procurements over $10 million (a provision in the FY 1989 DOD authorization act limits, but does not outright ban, the use of fixed price development contracts over $10 million);
- Facilitating the use of commercial products by raising the threshold for submitting certified cost or pricing data from $100,000 to $500,000 for such items (see related report in this section);
- Expanding use of the Defense Enterprise Program to every major program.

The DEP approach is intended to streamline program management by exempting designated programs from any regulation, policy, directive, or rule

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 23 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

Dear Mr. Reilly:

On July 20, 1988, we received for review under Executive Order No. 12291 an Environmental Protection Agency (EPA) proposed rule entitled "Proposed Amendment to Hazardous Waste Incinerator Standards." This draft proposal would establish additional limits (beyond those already in place) for emissions of toxic metals, hydrogen chloride (HCl), and total unburned hydrocarbons (THCs)[1] from hazardous waste incinerators. EPA also submitted for review two draft guidance documents implementing the HCl and THC portions of this rule. Based on the information in EPA's Regulatory Impact Analysis (RIA), the incremental benefits of the proposed limits are extremely small and existing standards on incinerators are apparently sufficient to protect human health and the environment. In the absence of more information on the effects of these limits, we must conclude that this rule does not comply with Section 1(b) of Executive Order No. 12291. Therefore, we are returning this draft rule, with the guidance documents, for your consideration.

This draft regulation amends existing hazardous waste incinerator regulations at 40 CFR 264, Subpart O, by adding specific limits on toxic metal, hydrogen chloride, and residual organic emissions. These emissions are already controlled under existing standards: toxic metal emissions are restricted by a limitation on particulate matter; releases of hydrogen chloride are subject to a technology-based standard; and organic emissions are limited by a destruction and removal efficiency (DRE) standard. The draft regulation keeps these requirements in place and adds more stringent limits based on EPA calculated Reference Air Concentrations (see Table 1).

Overall, EPA's primary mission is to reduce the level of risk to the health of the American people and to the quality of our environment. To achieve this goal, the Agency committed to control pollution as efficiently as possible, by focusing the Agency's limited resources on cases of greatest risk.[2]

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[1] The THC limit uses carbon monoxide (CO) as a proxy.

[2] See Regulatory Program of the United States Government, April 1, 1988 - March 31, 1989, page 375.

Table 1

SUMMARY OF INCINERATOR EMISSIONS LIMITS

| Pollutant | New Source Performance Standards (40 CFR 60) | Existing Rule for Waste Incinerators (40 CFR 264) | Proposed Requirements |
|---|---|---|---|
| Metals | 0.08 grains/dscf | • 0.08 grains/dscf | • 0.08 grains/dscf<br>• metal specific Reference Air Concentration (RAC)* |
| Organics | none | • 99.99% destruction and removal, and;<br>• unit specific CO limit with continuous monitoring | • 99.99% destruction and removal, and;<br>• CO limit of 100 ppm or level associated with lifetime MEI risk of $\leq 10^{-5}$ |
| Hydrogen Chloride | none | • 1.8 kg/hour or;<br>• 99% destruction and removal, and; | • 1.8 kg/hour or;<br>• 99% destruction and removal, and;<br>• RAC* |

* RAC's correspond to emissions that pose a one in one hundred thousand ($10^{-5}$) chance that a maximumly exposed individual will suffer an adverse health affects after 70 years of exposure under reasonable worst case assumptions.

This is a complex task requiring the Agency to determine what sources of pollution need to be addressed and how best to control them. Based on the available information, we are concerned that this draft rule may not represent the most efficient use of the nation's pollution control resources.

Of the three proposed incinerator controls, the Agency only estimated benefits for one: toxic metal limits. (EPA estimated cancer-related health benefits; it did not estimate the reduction in non-cancer effects due to the toxic metal standard.) Based on this information, EPA's analysis indicates this rule will not significantly reduce risk. First, EPA estimates that the toxic metal limits will yield a reduction of 0.01 statistical cancer cases each year.[3] Second, EPA's RIA indicates that toxic metal emissions from these devices pose extremely small risks. For instance, EPA's estimates of the upperbound lifetime risks to the most exposed individual are generally lower than the average lifetime risk of being killed by lightning (see Table 2). EPA estimates that upperbound lifetime risks under existing standards range from five in one hundred thousand to one in one billion--risks within or below EPA's acceptable risk range of one in ten thousand to one in one million (see Figure 1).[4]

Table 2

RISK OF DEATH FROM VARIOUS CAUSES IN THE U.S. POPULATION

| Cause | Risk (based on 70 year lifetime) |
|---|---|
| Motor Vehicle | $2 \times 10^{-2}$ |
| Fire | $2 \times 10^{-3}$ |
| Choking (food or objects) | $1 \times 10^{-3}$ |
| 4 tablespoons of peanut butter per day (cancer) | $6 \times 10^{-4}$ |
| Yearly roundtrip flight N.Y. to L.A. (ionizing radiation) | $2 \times 10^{-4}$ |
| Riskiest hazardous waste incinerator | $5 \times 10^{-5}$ |
| Lightning | $4 \times 10^{-5}$ |
| Riding Mowers | $3 \times 10^{-5}$ |
| Toothpick ingestion | $3 \times 10^{-6}$ |

Source: *Statistical Abstract of the United States*/EPA documents.

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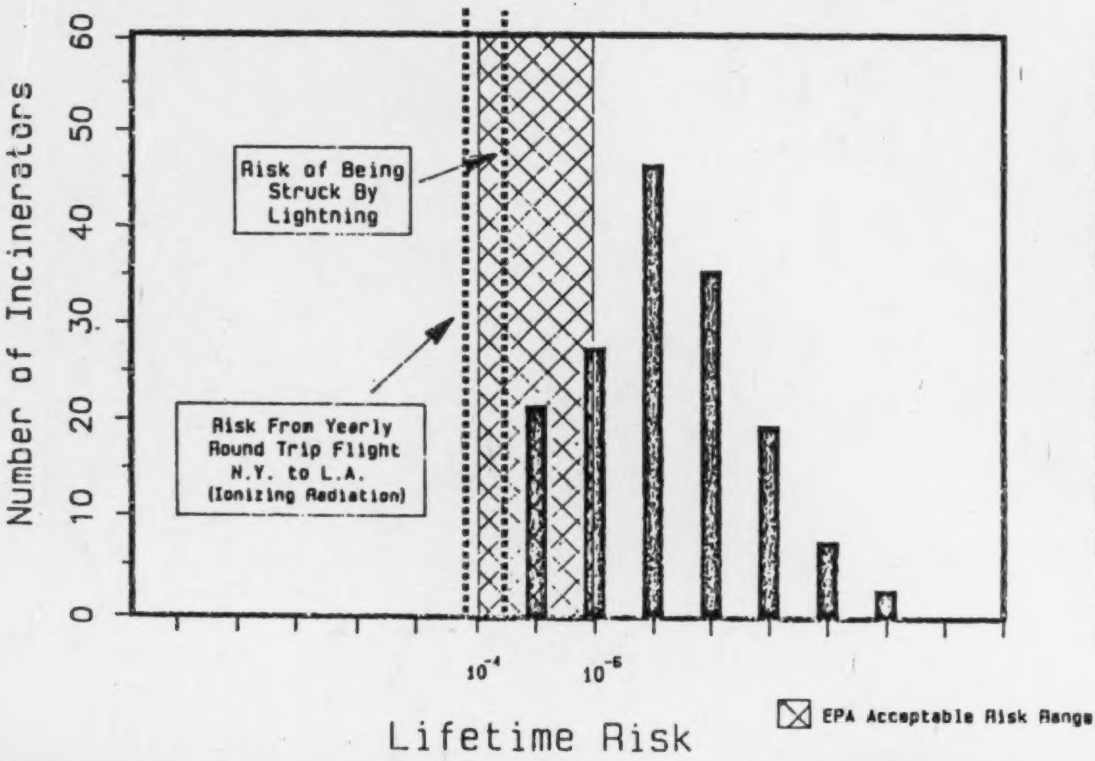
[3] There are over 420,000 cancer mortalities in the U.S. each year.

[4] See letter from EPA Administrator Lee Thomas to Senator George Mitchell dated June 24, 1988.

Figure 1.

Risks Posed By Toxic Metal Emissions From Incinerators



Source: EPA, "The Regulatory Impacts of Proposed Hazardous Waste Incineration Regulations" [Draft], April 1988.

EPA estimates that this draft proposed rule will cost consumers and industry $6.4 million annually; the toxic metal standard will impose costs of $2.9 million per year. As a result, the risk-cost tradeoff for the toxic metal portion of this rule yields a cost of $288 million per statistical cancer case avoided. This compares unfavorably with other Federal regulatory actions, falling far out of the range of resources normally expended to reduce health risks[5] (see Table 3). This rule exceeds the range of costs generally accepted for risk reduction regulations by such a great margin that we believe you should examine further the likely benefits of the draft proposal.

### Table 3

### RISK-COST TRADEOFFS FOR SELECTED REGULATIONS

| Regulation | Agency | Year issued | Cost per statistical life saved ($ millions) |
|---|---|---|---|
| Unvented space heaters | CPSC | 1980 | $ 0.07 |
| Servicing wheel rims | OSHA | 1984 | 0.25 |
| Fuel system integrity | NHTSA | 1975 | 0.29 |
| Fall protection | OSHA | 1985 | 1.40 |
| Ethylene Oxide | OSHA | 1984 | 60.00 |
| Asbestos | OSHA | 1986 | 89.00 |
| DES ban in cattlefeed | FDA | 1979 | 132.00 |

Source: *Regulatory Program of the United States Government*, April 1, 1988--March 31, 1989, page 36.

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[5] In addition, it falls well outside of the range of $300,000 to $700,000 per statistical cancer case avoided that EPA has generally used as a measure of the willingness-to-pay for a reduction in health risks. See EPA, "Regulatory Impact Analysis of Proposed National Primary Drinking Water Regulations for Synthetic Organic Chemicals," September 1, 1988, page 5-9. Also, see EPA, Guidelines for Performing Impact Analysis, December 1983, page 11.

At this point, our review is constrained to examining the costs and cancer related benefits of the proposed additional controls on toxic metals. We encourage EPA to specify other benefits that may result from the proposed additional controls on HCl and THCs. These estimates need not be precise, they could, for instance, be presented as ranges.

I also encourage you to consider regulatory alternatives that may result in greater reduction in risk. Such alternatives might help meet our mutual commitment to focus scarce resources where significant risk reduction is obtainable.

If you have any questions, please contact me.

Sincerely,

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

APR 10 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

Dear Mr. Reilly:

The Environmental Protection Agency (EPA) has resubmitted draft final rules establishing New Source Performance Standards (NSPSs) that would limit volatile organic compound (VOC) emissions from Air Oxidation and Distillation processes and a draft proposed rule limiting VOC emissions from reactor processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). After consultation with your staff, we believe that EPA has not adequately responded to our concerns as outlined in an earlier letter (dated November 18, 1986) to former-Administrator Lee Thomas (Enclosure 1). As a result, we have concluded that these three draft rules are inconsistent with the principles of Executive Order No. 12291 for the following reasons:

1. These rules would impose control costs that are substantially higher than both the costs typically incurred under other NSPS and the available estimates of the likely benefits. The $2,650 per megagram (Mg) cutoff adopted in these rules is roughly four times published estimates of the likely benefits of controlling VOC emissions. (See the enclosed letter of November 18, 1986).

   Although EPA estimates that the maximum actual control costs at current "low" natural gas prices would be $1,200 per Mg for air oxidation sources, $1,700 per Mg for distillation sources, and $1,425 per Mg for reactor sources, these costs are still much greater than the current best estimate of the likely benefits of controlling VOC emissions. In addition, contrary to EPA's claims, some commenters have stated that they believed the control cost for some marginal emission streams would be as high as the cutoff control cost. And, EPA staff have acknowledged that alternative measures that might be taken under this very stringent cutoff to avoid control requirements for these marginal streams may well involve costs that equal the $2,650 per MG cutoff.

2. While EPA has asserted that these measures yield important air toxics benefits, EPA has not demonstrated that the control costs for each emissions stream bears some relationship to the likely benefits of toxics control. There

is, in fact, a wide variation in the concentration and the potency of SOCMI process emissions, with many process streams containing little or no toxic constituents. Estimates available to us indicate that the risk reduction benefits of control are small -- no more than 20 percent of the benefits from controlling VOC.

We recognize the essential leadership role for EPA in the control of VOC's so that the quality of the nation's environment and the health and welfare of its citizens are maintained. In doing so, EPA must present well-reasoned regulations that embody the principles of Executive Order No. 12291. As a result, we ask that you review the selected cutoff level in these NSPSs to take into consideration available estimates of the benefits of controlling VOC emissions.

I hope you find these comments useful in your reconsideration of these three NSPSs.

Sincerely,

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

APR 10 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

On August 2, 1988, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12291 review a draft proposed rule entitled "Corrective Notice and Reproposed Liner/Leak Detection Rule."

On July 15, 1985, EPA codified liner and leak detection requirements for hazardous waste land disposal permits (50 FR 28703). On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit invalidated part of the codification rule. The Court decided that EPA had misinterpreted section 3004(o)(1) of the Resource Conservative and Recovery Act (RCRA) by applying the liner and leak detection requirements to facilities that had submitted a Part B permit application to EPA on or before November 8, 1984.[1] The draft rule we have under review would repropose the liner and leak detection requirements for the facilities exempted by the Court.

In October 1988, my staff requested information regarding the regulatory effects of this rule. One important piece of information we requested was the estimated number of facilities affected by this rule. I understand EPA staff are still in the process of analyzing data to answer this question.

Since it appears EPA may need more time to respond to this request, you may wish to withdraw the draft rule and resubmit it when it is ready. In the meantime, for the record, I have suspended review under Executive Order No. 12291 until your analysis is completed.

Sincerely,

/s/

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

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[1] *United Technologies Corp. v. U.S. Environmental Protection Agency*, 821 F.2d 714 (D.C. Cir. 1987).

APR 18 1989

Mr. William Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

On October 28, 1988, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12291 review a draft reproposal of the 1987 Notice of Proposed Rulemaking requiring automobile manufacturers to install onboard control equipment to limit refueling emissions from new motor vehicles. The reproposal is entitled *"Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Refueling and Evaporative Emission Regulations for Gasoline and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles."*

During Executive Order No. 12291 review, EPA staff agreed in January to revise the reproposal to request comment on the safety of onboard controls and to leave open the alternative of adopting at the pump controls (i.e. Stage II). EPA staff also agreed to submit a separate draft proposed rule setting standards for evaporative emissions. In addition to the Executive Order review, the Department of Transportation (DOT) has now announced (March 3, 1989) that it would conduct a further study of the safety issues associated with onboard control systems.

Over two months have passed since your staff agreed to submit the draft proposed rule limiting evaporative emissions. Since the development of this proposed rule is taking longer than anticipated, I have, for the record, suspended Executive Order No. 12291 review of the onboard reproposal. I will begin the review of the onboard reproposal again upon submission of the evaporative emissions proposal and completion of DOT's review of the safety issues associated with the onboard control system.

Sincerely,

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

ENVIRONMENT REPORTER Current Developments

*A weekly review of pollution control and related environmental management problems*

Volume 20, Number 6 THE BUREAU OF NATIONAL AFFAIRS, INC. June 9, 1989

## HIGHLIGHTS

**INNOCENT LANDOWNER CLAIMS** under superfund law would be settled according to new guidance issued by the Environmental Protection Agency (p. 315) . . . The guidance also outlines when the government may agree not to sue certain landowners (p. 323).

**FBI AGENTS DESCEND** on the Rocky Flats nuclear weapons plant near Denver, armed with a search warrant for evidence of criminal violations in storage, treatment, and disposal of hazardous and radioactive wastes (p. 316).

**CONGRESS APPROVES $15 MILLION** for new EPA programs, money that would be shifted from superfund. Agency officials say the funding may come too late in the fiscal year to be useful, however (p. 317).

**CLEAN AIR ACT AMENDMENTS** are discussed at a meeting at the White House between congressional leaders and President Bush. One senator says Bush seems receptive to significant limits on sulfur dioxide emissions (p. 318).

**DRINKING WATER ENFORCEMENT** is stepped up in response to a May memorandum from EPA Administrator William K. Reilly. He asks regional officials to take formal action against flagrant violators (p. 318).

**AN EPA LAW JUDGE** recommends against attaching a recycling requirement to a permit for an incinerator in Spokane, Wash., an agency source tells BNA. A final decision on the recommendation will be made by Reilly (p. 319).

**LOCATION AND DESIGN STANDARDS** for hazardous waste facilities should be linked, an Office of Management and Budget official recommends. Facilities proposed for "safe" locations could be held to less stringent standards, he tells EPA (p. 320).

**SIX EMISSION CONTROL RULES** are rejected, or their reviews suspended, by OMB, according to a series of letters outlining disagreements between the White House and EPA. OMB is awaiting agency revisions to the rules (p. 321).

**A HEARING IN NORTH CAROLINA** on the state's authority to run the federal hazardous waste program is extended to mid-July. The state may call more than 30 witnesses (p. 322).

**THE NATIONAL CONTINGENCY PLAN,** the revised regulatory blueprint for superfund cleanups, will be issued in February 1990 under a consent decree (p. 323).

**TWO NEW TEST METHODS** to measure particulate emissions from stationary sources are proposed by EPA (p. 325) . . . Full Text (p. 394).

**CONCERN OVER FALSE CREDITS** is driving the development of EPA rules on banking and trading of emissions credits by vehicle manufacturers (p. 329) . . . Full Text (p. 349).

**OCCIDENTAL CHEMICAL AGREES** to pay for future remedial work in the Love Canal area in New York. The consent decree would not cover past response costs (p. 332).

**CALIFORNIA'S TOXICS LAW** should not be challenged by the federal government, an OMB official tells a review panel of the White House Domestic Policy Council. He also advises federal officials not to discuss overturning Proposition 65 with industry representatives (p. 335).

**CIVIL AND CRIMINAL LIABILITY** of corporate officers under federal environmental laws is discussed by attorney John F. Seymour in a BNA Analysis and Perspective (p. 337).

**This week's supplement to Environment Reporter reference file binders includes the addition of a state sludge management program to EPA rules, changes to the Kansas CO and Michigan TSP tables of the air quality planning rules, amendments to the federal NPDES rules, revised Coast Guard oil spill regulations reducing ship-generated garbage discharge, agency corrections to the national drinking water regulations, amended land disposal rules and changes to various state implementation plans.**

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"We were given the distinct impression that it might be too late for EPA to require recycling in the case of Spokane's permit," she said, "but the officials, particularly [Director of the Office of Pollution Prevention] Gerald Kotas, also gave the clear feeling that the agency was considering adding recycling to permit requirements."

Platt added that recycling in Spokane's case could save the project substantial construction funds.

She said 35 percent of the city's solid waste stream is yard waste that could be recycled. Along with cutting the load on the incinerator, she said, composting would remove a major source of NOx emissions from the plant.

The facility operator has agreed to add $10 million in thermal NOx controls to the incinerator, she noted, but this investment could be down-scaled in large part if yard wastes were eliminated as a fuel.

The recycling requirement could have broad national implications, considering the several hundred incinerators that are on the drawing boards of various municipalities. Groups such the U.S. Conference of Mayors have urged that EPA deny the appeal; on the other hand, 10 environmental groups wrote Reilly asking that he remand the permit to the state.

*Hazardous Waste*

## OMB URGES EPA TO OFFER DESIGN INCENTIVES TO LOCATE TREATMENT FACILITIES IN 'SAFE' AREAS

The Office of Management and Budget in a May 8 letter urged the Environmental Protection Agency to consider incentives that would encourage companies to locate hazardous waste facilities in "safer, less environmentally sensitive areas."

The letter came in response to a draft EPA proposed rule laying out location requirements for land-based hazardous waste facilities, such as landfills and surface impoundments, as well as facilities that store hazardous waste in tanks and other containers.

The incentives discussed in the letter to EPA Administrator William K. Reilly from Jay Plager, OMB administrator of the office of information and regulatory affairs, included allowing companies to use "minimum design standards" for these facilities when located in less-sensitive areas.

The minimum design standards spelled out in the 1984 amendments to the Resource Conservation and Recovery Act include a top synthetic liner and a bottom liner of compacted soil or a synthetic material, plus a leak detection and leachate collection system sandwiched between, Art Day, branch chief for the land division in the EPA Office of Solid Waste, told BNA June 9.

Most landfills and surface impoundments exceed these standards for the bottom layer at least, Day said.

While liner design requirements have not been issued in a final rule, an EPA guidance calls for a top synthetic liner and leachate collection and leak detection system and a composite liner of both synthetic material and clay on the bottom, Day said. He argued that clay alone might cra[illegible] waste to seep from the site and a synthetic liner [illegible] tear.

### Build Envelope

In explaining OMB's letter, Marcus Peacock, an OMB assistant branch chief, told BNA June 9 that OMB urged EPA "to build a system or envelope of protection out there for these facilities and to show a correlation between design and location in how these facilities are put together. Basically to build a little flexibility into the rule."

The letter said that the agency has set design standards without considering location or types of wastes disposed of at the facility.

OMB acknowledged that on a case-by-case basis EPA can allow facilities alternatives to the standards, but the office charged that these were used very infrequently and did not provide positive incentives for locating facilities at "good" sites.

OMB suggested that EPA consider modifying design and operating requirements based on consideration of a "location's climate, distance to expected point of use, velocity of the aquifer, the type of soil present, and other factors."

"Overall," OMB wrote, "this rule offers an excellent opportunity to fit the various regulations together so that the requirements facility owners face vary with the environmental risk posed by their sites. This would foster the proper incentives and eventually lead to safer and less costly waste disposal."

Day said the agency allows companies to seek less stringent alternatives, but he said the standards are high. He said a company would have to show that there would be no migration of wastes from the site in the future to get a variance from the design requirements.

Day said variances from RCRA's requirements are available but few sought them when trying to avoid the design and location requirements in the law. He said they may be worried about increased liability that may result from avoiding meeting RCRA's full requirements.

The proposed location rule is expected to be released next December, Day said. An industry official said the rule had been "kicking around the agency for years." Although several versions of the rule have been drafted and circulated, they were always missing key parts, the official said.

Day said the agency had prepared an answer to OMB's criticism, which was circulating in the agency. He added that the comments were "valuable and reasonable."

Day said the proposed location rule would cover between 1,500 and 2,000 commercial waste treatment operations and generators that have on-site treatment, storage, or disposal facilities, all of which must have RCRA Part B permits. It would affect siting of land-based facilities, such as landfills, surface impoundments, "land farms" and waste piles, and non-land-based facilities, such as areas where containers and tanks that store hazardous waste are located. Consequently, storage sections of incineration and other facilities would be covered by the rule.

Day said only two location standards for siting these facilities now apply: they cannot be located in a 100-year-flood plain or near an earthquake fault.

Under the draft proposal several other limitations would apply.

### 'The Good, The Bad, And The Ugly'

Additionally, Day said, the rule would affect closure requirements for facilities that cannot meet the new requirements. It would allow options between closing or making engineered changes to meet the protective requirements for an operating facility.

"Location issues are not black and white. I like to call them the good, the bad, and the ugly. The ugly you can fix with a face lift such as through design and operating changes, but the bad are just plain bad," Day said.

"We are trying to find a better way to tailor the circumstances to be something between operating or closing and taking everything away or closing and leaving everything in place."

He said the rule would offer various options, such as

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allowing a portion of waste from a closing facility to be moved off-site for treatment and part to be treated on-site.

He also said the rule would expand the list of areas in which facilities cannot be located to include:

- Wetlands;
- Karst areas, where sink holes would create problems for holding wastes;
- Over high resource aquifers, similar to sole source aquifers as used in the drinking water and ground water programs;
- Areas with problems due to "soil creep," where geology contributes to soil movement; and
- On seismic impact areas, where ground movement is expected.

Day said the last category was in the "ugly" area, meaning siting could take place only if designs were shown to be adequate to accommodate possible seismic changes.

The rule would also require buffer zones on the facility in an attempt to ensure the hazardous wastes and their effects are isolated from nearby populations, Day said.

"These zones would allow space and time to respond with a corrective action program to clean up or halt the movement of ground water after a release," he said, based on the speed of flow and the level of contamination and other variables.

## *Air Pollution*

### OMB LETTERS OPPOSE EPA PROPOSALS ON SIX EMISSION CONTROL REGULATIONS

In a series of letters just put on the public record, the Office of Management and Budget has disclosed its strong disagreements with the Environmental Protection Agency on six proposed rules.

The four OMB letters rejected, or suspended review, of the following EPA rule-makings:

- A draft reproposal of a proposed rule to require automobile manufacturers to install equipment to control refueling vapor emissions;
- A draft proposed rule on liner and leak detection requirements for hazardous waste land disposal permits;
- A proposed amendment to hazardous waste incinerator standards for toxic metals, hydrogen chloride, and total unburned hydrocarbons (19 ER 2363);
- Two draft final rules establishing new source performance standards for volatile organic compound emissions for air oxidation and distillation processes; and
- A draft proposed rule limiting volatile organic compound emissions from reactor processes in the synthetic organic chemical manufacturing industry.

Three of the four letters date from April; the letter on hazardous waste incinerators is from February.

In two cases—onboard controls and liner and leak detection—the letters announced that OMB is suspending its review until EPA reacts to previous oral criticisms from OMB staff. The suspension procedure was established by OIRA Administrator Jay Plager, who signed all the letters. The suspension is seen as an alternative to formal rejection of agency proposals and as a way to "stop the clock," thus avoiding the appearance that OMB is delaying approval of the rule. OMB reviews all agency rule proposals and is sometimes criticized for holding up rules, a charge OMB officials say is much exaggerated.

#### OMB Awaits Agency Revisions

Regarding the refueling emission rule, Plager advised EPA that two months had passed since EPA staff agreed to submit a revised proposal leaving open the option of at-the-pump controls and addressing safety issues. EPA also agreed, Plager said, to submit a separate rule dealing with the related issue of controlling evaporative emissions.

Plager said he would begin the review of the onboard proposal again when EPA submits its revised proposals and the Transportation Department completes a study of safety issues concerning the onboard controls.

The choice between onboard controls and controls on gas pumps was highly controversial toward the end of the Reagan administration when former EPA Administrator Lee M. Thomas unsuccessfully sought to push the onboard rule through over OMB objections. The issue may be addressed by President Bush in his clean air proposals, which are expected sometime in June.

Regarding liner and leak detection requirements for hazardous waste land disposal permits, Plager said EPA has not replied to OMB's October request for information. Among other things, he wrote, OMB asked about the estimated number of facilities to be covered by the rule. Again, Plager suspended review.

Plager flatly rejected EPA's two draft final rules establishing new source performance standards for volatile organic compound emissions for air oxidation and distillation processes, and its draft proposed rule limiting volatile organic compound emissions from reactor processes in the synthetic organic chemical manufacturing industry.

All were inconsistent with the regulatory principles in Executive Order 12291, according to Plager's two-page letter. Evidently the battle between the two agencies is long-running, because Plager said EPA's proposals were resubmittals that failed to respond adequately to OMB concerns raised in late 1986.

#### Control Costs, Benefits Questioned

Plager said the rules would impose control costs "substantially higher than both the costs typically incurred under other [new source performance standards], and the available estimates of the likely benefits." He said the $2,650-per-megagram cutoff adopted in the rules "is roughly four times published estimates of the likely benefits of controlling volatile organic compound emissions."

Further, Plager wrote, "While EPA has asserted that these measures yield important air toxic benefits, EPA has not demonstrated that the control costs for each emissions stream bear some relationship to the likely benefits of toxics control."

The longest and oldest of the letters is the six-page February letter about incinerator standards, which concluded that "this draft rule may not represent the most efficient use of the nation's pollution control resources."

Plager's letter said the risk of death from toxic metal emissions from the riskiest hazardous waste incinerator—one death per 20,000 individuals based on a 70-year lifetime of exposure—is within EPA's acceptable risk range of one in 10,000 to one in 1 million. He added that the regulation would not significantly reduce the risk, yielding a reduction of just 0.01 cancer cases per year. Plager further argued that risk-cost trade-off "compares unfavorably with other federal regulatory actions, falling far out of the range of resources normally expended to reduce health risks."

EPA's projected annual cost of the incinerator rule was $6.4 million annually, $2.9 million of which was attributed to the rule's toxic metal portion. Plager said the rule would mean a cost of $288 million per statistical cancer case avoided, noting that EPA has used a range of $300,000-$700,000 per statistical cancer case as a measure of the willingness-to-pay for a reduction in health risks.

MAY 8 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

Dear Mr. Reilly:

The Environmental Protection Agency (EPA) is developing a proposed rule establishing location standards for hazardous waste facilities. This rulemaking will address the last important modification of hazardous waste regulation required by the Hazardous and Solid Waste Amendments of 1984. We are particularly interested in the location standards proposal because it could lead to more effective regulation of the disposal of hazardous wastes.

In the past, hazardous waste managers have had little guidance in locating their facilities. In far too many cases, waste has been disposed of in locations where hydrogeologic conditions encouraged rapid migration of the waste (such as wetlands) and where the risks to public health and the environment from contamination were not adequately considered. By linking the siting requirements of this rule with other regulations governing hazardous waste disposal, this rule offers EPA an opportunity to restructure the incentives for siting these facilities so that they are located in safer, less environmentally sensitive areas.

Although EPA has already promulgated regulations on (1) the types of wastes that can be disposed at these sites, (2) minimum design and monitoring requirements, and (3) closure standards, these regulations leave intact the "neutral" incentive structure on the selection of sites for disposal facilities. In developing these regulations, EPA has generally not considered their interaction with other hazardous waste requirements--especially the effect of location on the overall risks associated with land disposal. For instance, EPA banned the land disposal of certain wastes without considering the effects of alternative disposal facility designs on the risks of land disposal.[1] Similarly, regulations establishing minimum design requirements, such as liner standards, generally were set without considering the location of the site or the types of wastes disposed at the facility.

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[1] See, for instance, 53 Federal Register 31138.

In a few cases, EPA has promulgated rules that allow the consideration of the relationship between design and location on a case-by-case basis. For instance, owners or operators need not meet certain design requirements if they can demonstrate that alternative design and operating practices, together with location characteristics, will be as effective as EPA's specific design standard in preventing the migration of any hazardous constituent into ground water or surface water.[2] Because these exceptions are narrow and/or place an extremely difficult burden of proof on facility owners, I understand that few, if any, facilities have taken advantage of these provisions. As a result, the current structure of EPA's regulations do not provide positive incentives for the location of facilities at "good" sites. Under these circumstances, an owner is less likely to select a location that possesses favorable characteristics (such as, greater depth to the aquifer, lower rainfall, or more favorable hydrogeologic characteristics).

The absence of adequate incentives is particularly important because risks vary significantly with environmental setting. For instance, a detailed EPA study indicates that changes in environmental setting can change the risk posed by a landfill by nine orders of magnitude or more. In contrast, the most extreme changes in liner design provide a maximum incremental change in risk of less than three orders of magnitude.[3] Thus, the agency's rulemakings focus instead on control measures providing much smaller risk reduction benefits, even though location appears to be the dominant factor in determining the risks of these facilities.

As a result, I believe the agency ought to recognize explicitly the degree of protection provided by location in developing its proposal for location standards and tailor its other requirements in a way that gives facility owners an incentive to locate in "good" locations. The agency should consider modifying design and operating requirements based on a location's climate, distance to expected point of use, velocity of the aquifer, the type of soil present, and other pertinent factors. For example, the agency could require more extensive monitoring and additional liner requirements at sites located in residential areas. Similarly, the agency has noted and some in Congress have suggested that it may be appropriate to allow sites

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[2] See 40 CFR 264.301(d).

[3] See EPA's Draft Report, "Liner Location Risk and Cost Analysis Model," January 1985, p. 4-1 *et seq.*

3

in more protective locations to meet only the minimum design requirements mandated by Congress, even though these are less stringent than the general requirements proposed by EPA.[4]

Overall, this rule offers an excellent opportunity to fit the various regulations together so that the requirements facility owners face vary with the environmental risk posed by their sites. This would foster the proper incentives and eventually lead to safer and less costly waste disposal.

I hope these comments are of assistance, please let me know if you have any questions.

Sincerely,

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

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[4] See section 3004(o)(5) of the Resource Conservation and Recovery Act as amended (42 U.S.C. 6925) and 51 Federal Register 10709 et seq. Also see comments by Representative William Thomas at Congressional Record, August 4, 1983, p. H6502.

DAILY REPORT FOR EXECUTIVES

ROUTE TO

DER NO. 114 • WASHINGTON, D.C. THURSDAY, JUNE 15, 1989

## TODAY'S SUMMARIES

**House Adopts Rule For Floor Debate On S&L Bill** — The House begins consideration of a bill (HR 1278) to recapitalize the S&L insurance fund and overhaul thrift regulation, with lawmakers' opening remarks setting the stage for what many believe will be tense debate on proposed capital standards. The House first votes 330-95 to adopt a modified open rule that allows floor debate on 15 amendments. Although at total of 19 amendments will be considered, House Banking Committee Chairman Gonzalez plans to offer five en bloc. Congressional sources say they expect the House to finish consideration of HR 1278 June 16. . .Meanwhile, President Bush urges the House to include strong capital requirements and accounting standards in the bill. .............................. **A-17, A-21**

**Business Inventories Up In April** — Business inventories rose 0.6 percent in April to a seasonally adjusted $769.8 billion, marking the largest monthly increase in three months, the Commerce Department reports. But sales rose 1.7 percent to $516.2 billion as auto dealers began offering incentives in an effort to cut bulging inventories. Sales in other retail categories such as food and clothing also were strong. ................................................................ **N-1**

**House Democrats Elect Gephardt, Gray To Leadership** — House Democrats, recovering from an ethics scandal that diminished their leadership ranks, elect former presidential hopeful Rep. Gephardt as majority leader. The House Democratic Caucus also overwhelmingly elects Rep. Gray as majority whip, in a show of support for Gray as the FBI conducts a criminal investigation into personnel practices in his office. ............................................................ **F-1**

**OMB Suspends Review Of Three More EPA Rule Proposals** — The Office of Management and Budget suspends review of three more rule proposals from the Environmental Protection Agency. The latest actions bring to five the number of EPA proposals that OMB has stopped reviewing while EPA tries to answer OMB questions or objections. The latest three suspensions concern a rule requiring agencies selling property to disclose information about hazardous substances, a rule on storage and land disposal of low-level radioactive waste, and a rule on hazardous waste management facilities. ..... **A-7**

### TEXT

IRS memo on rulings process .................................................... **L-1**

JCT staff documents relating to Senate Finance Committee markup of various tax proposals, including table of estimated revenue effects (JCX-21-89) and description of chairman's amendments to Section 89 bill (JCX-22-89) .......................................... **L-7**

JCT staff description of penalties relating to foreign tax provisions (JCX-23-89) prepared for House Ways and Means Oversight Subcommittee ...................................... **L-8**

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- A realistic balance between protecting retirement income against current consumption and encouraging greater individual savings must be struck;
- Plan sponsors' risks must be at an acceptable level to ensure that existing plans be adequately funded; and
- Pension rules must be simple and must recognize the long-term nature of the system and the need for flexibility.

Weizmann acknowledged that it will be difficult to get Congress to think in terms of long-range planning. "We are asking Congress to fix a problem that will hit future Congresses, and that's very difficult for them to do," he said. The policy paper is intended to highlight the macroeconomic issues of an aging workforce and a generation of baby boomers who will strain the Social Security system, he stated. By 2030, when the youngest baby boomer reaches age 65, the proportion of the population aged 65 or older will rise to 21 percent from 12 percent today.

The problem is that Congress tries to micro-manage the pension system with a confusing overlay of rules, Weizmann continued. APPWP will target some of the confusions in several employee benefit regulatory areas, and make recommendations for simplification in another paper it plans to release at the end of June, he said. The association discussed this initiative at its annual meeting in May.

Copies of the policy paper are available for $10 each from APPWP, 1331 Pennsylvania Ave. N.W., Suite 719, Washington, D.C. 20004; telephone (202) 737-6666. ☐

*International Trade*

### SUPER 301 COULD HURT GATT, EC COMMISSION'S DELORS WARNS

The "Super 301" procedures of last year's U.S. trade act could become an obstacle to the success of the current round of multilateral negotiations under the General Agreement on Tariffs and Trade, European Community Commission President Jacques Delors told reporters in Washington June 13.

Delors, who stressed that his visit was a "private trip—not an official visit," warned that "unilateralism can be a major obstacle to the success of the Uruguay Round."

Delors was on Capitol Hill June 13 to meet with members of a special, bipartisan Senate task force on "EC 1992" headed by Sens. Max Baucus (D-Mont) and William Roth (R-Del). Roth announced to reporters after the closed meeting that Delors had expressed a willingness to set up "informal procedures" to review matters of mutual interest between the EC and the United States.

Delors added that he feels it is necessary to reinforce the relationship between the Congress on one side and the European Parliament and the EC Commission on the other, to help clear up misunderstandings between the EC and the United States.

Responding to a question on whether he supports U.S.-European cooperation on development of high-definition television, Delors said that he hoped it would be possible for the United States to cooperate with European partners in high-technology areas such as HDTV. However, he declined to comment on whether he would discuss the matter further with President Bush when the two met June 14 (see related report in this section). ☐

*Environment*

### OMB SUSPENDS THREE MORE EPA RULE-MAKINGS, INDICATING IMPASSE IN TALKS WITH AGENCY

The Office of Management and Budget has suspended review of three more rule proposals from the Environmental Protection Agency, according to letters recently placed on the public record at OMB.

The latest actions bring to five the number of EPA proposals that OMB has stopped reviewing while the agency tried to answer OMB questions or objections.

OMB's policy of suspending review is a new procedure, aimed at avoiding the appearance of delaying agency proposals. In the past, OMB simply would have kept the rule proposal on its books while awaiting an agency response.

The suspensions date back several months, but OMB's Office of Information and Regulatory Affairs only recently has begun placing the suspension letters on the public record. Four suspension letters to EPA went on the record two weeks ago (106 DER A-18, 6/5/30). Three more letters have appeared subsequently.

The latest three suspensions concern:

- A draft final rule entitled "Reporting hazardous substance activity when selling or transferring federal real property,"
- A draft proposed rule entitled "Environmental standards for the management, storage and land disposal of low-level radioactive waste and naturally occurring and accelerator-produced radioactive waste," and
- A draft proposed rule entitled "Corrective action for solid waste management units at hazardous waste management facilities."

In each case, OIRA Administrator James Plager indicated that OMB's questions about the proposals remained unanswered by EPA. In one closing sentence, from the April 28 letter on the solid waste rule, Plager advised EPA Administrator William Reilly, "Since this review is taking longer than I anticipated, I have, for the record, suspended review under Executive Order No. 12291 until your review in completed."

The solid waste rule had been under review at OMB for over five months when Plager met with EPA staffers in March to discuss it. The draft rule, considered a major one, is the first step in developing a comprehensive regulatory framework for the remediation of contaminated hazardous waste sites under the Resource Conservation and Recovery Act. It will establish when and how corrective action must be implemented, including procedures for deciding what level of contamination must be remediated, the method for controlling the source of contamination, and the method of treatment or disposal.

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0148-8155/89/$00.50

Plager listed far-reaching five questions arising from the meeting, beginning with whether the proposal placed "undue emphasis on so-called 'permanent' remedies at the expense of other factors which should also receive consideration, such as short-term effectiveness and cost." He also asked, "To what extent will the reliance on source controls such as incineration result in increased risks to human health and the environment?"

Plager went on to question EPA's choice for the appropriate compliance boundary, asking if perhaps it should be smaller. Plager asked EPA's suggested boundary the boundary of the property rather than the fence line of the facility—would limit the selection of clean-up alternatives, raise costs, or increase health risks.

Other questions concerned EPA's proposed risk range, with a question noting that EPA's proposed range is higher than that used by other agencies. He further questioned the plausibility of the EPA's $7.4 billion cost estimate, of which $3 billion is for federal costs. Finally, he asked for a "more specific" benefit estimate.

### *OMB Cites Other Agencies' Objections*

Plager's two letters were far less detailed, but referenced concerns raised by other agencies.

In a March 16 letter suspending review of the radioactive waste rule proposal, Plager said interagency meetings on the rule, which EPA submitted in July, reached an impasse in January. According to Plager, EPA and the Nuclear Regulatory Commission agreed to draft a joint letter explaining their positions, but after two months "it is unclear when it will be completed and submitted to OMB."

Regarding the sale of federal property rule, Plager suspended OMB review March 3, eight months after EPA's rule was submitted. The rule would require federal agencies selling property to disclose to potential buyers information concerning the storage or release of hazardous substances on the property.

He attached letters from Treasury and the Small Business Administration explaining their concerns and requesting EPA to reexamine the rule, promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

The SBA in November asked that federal lending agencies selling foreclosed property be exempted from the rule, protesting that EPA wants to extend the rule further than Congress intended. Similarly, Treasury wrote in October that the rule would adversely affect collections by the Internal Revenue Service because it could be interpreted to cover seized property.

Plager's letter indicates that the matter was to be worked out by EPA and the Justice Department, but that the reexamination was still underway.

### *Previous Suspensions*

In other letters, OMB has suspended review of:

- A draft reproposal of a notice of proposed rulemaking to require automobile manufacturers to install on-board control equipment to limit refueling vapor emissions.
- A draft proposed rule on leak and liner detection requirements for hazardous waste land disposal permits.

Presumably the on-board rulemaking is dead in light of the President's recent decision to propose an amendment to the Clean Air Act which would seek to achieve the same goals with controls on gas pumps. ☐

*Energy*

## SENATE VOTES 82-17 TO PASS NATURAL GAS DECONTROL BILL

The Senate, by a vote of 82-17, passed legislation (HR 1722) on June 14 that would lift the remaining federal price controls of natural gas production by [illegible]3.

The measure will now have to be reconciled with the House bill, which was passed on April 17. The Senate Energy and Natural Resources Committee modified the House bill to include a provision of S 783 concerning newly spudded wells to provide for their decontrol by January 1, 1993, whereas the House version would lift controls on these wells effective immediately.

Both bills would decontrol renegotiated, expiring or expired, or terminated gas contracts on enactment while price controls on contracts still in force would be lifted by January 1, 1993.

Before taking final action on the proposal, which is supported by all segments of the natural gas industry, the Senate voted 55-44 to table an amendment by Sen. Bill Bradley (D-NJ) dealing with gas transportation authority.

In action the previous day, the Senate rejected an amendment by Sen. Howard Metzenbaum (D-Ohio) which sought to prohibit gas companies that violate environmental laws from passing the costs of violations on to consumers, and another dealing with indefinite price escalator clauses in gas contracts.

Federal price controls on natural gas were first imposed in 1954 by the Supreme Court in *Phillips vs. Wisconsin*. In 1978 Congress adopted legislation setting a timeframe for partial decontrol over a nine-year period.

No date has been set for a conference with the House. ☐

*Energy*

## DELIVERIES OF PETROLEUM PRODUCTS ROSE SHARPLY IN MAY, API REPORTS

Deliveries of petroleum products rose 4.7 percent in May, the largest year-to-year increase in several months, the American Petroleum Institute reported June 14.

Deliveries, a key measure of demand, averaged 16.8 million barrels per day last m[illegible]ompared to 16.1 million barrels delivered in the [illegible]e month a year ago, API said in its monthly statistical report.

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0148-8155/89/$00.50

MAR 3 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

On July 18, 1988, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12291 review a draft final rule entitled "Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property."

This draft rule would implement section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requiring Federal agencies selling real property to disclose to the potential buyer information concerning the storage or release of hazardous substances occurring on the property. In the course of our review, we found that several Federal agencies were concerned about this draft rule.

On October 18, EPA and my staff met with representatives of seven Federal agencies affected by this rulemaking. Following this meeting, Mark Sullivan, General Counsel for the Department of the Treasury, wrote a letter to EPA General Counsel Lawrence Jensen expressing concern regarding EPA's interpretation that the requirements of section 120(h) of CERCLA should be applied to property held in a custodial manner. In addition, Larry Parkinson, General Counsel of the Small Business Administration, wrote Attorney General Richard Thornburgh requesting the Department of Justice's opinion on this matter (see enclosures). On November 18, I met with EPA Administrator Lee Thomas and Lawrence Jensen. They indicated that they would re-examine this rule in light of these concerns.

It has been a while since EPA undertook this re-examination. You might wish to withdraw the draft rule and resubmit when it is ready. In the meantime, for the record I have suspended reviewed under Executive Order No. 12291 until your re-examination is completed.

Sincerely,

/S

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

Enclosures

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

NOV 22 1988

Honorable Richard L. Thornburgh
Attorney General
10th & Constitution Avenue, N.W.
Room 5111
Washington, DC 20530

Dear Mr. Thornburgh:

Presently under consideration by the Environmental Protection Agency and the Office of Management and Budget are draft final regulations pertaining to Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(h). Pursuant to that section, whenever an agency of the United States enters into a contract for the sale or transfer of real property "owned" by the United States, and upon which any hazardous substance has been stored for one year or more, known to have been released, or disposed of, that agency is required, among other things, to 1) give notice in the contract of the type and quantity of any such hazardous substance, and the time any storage, release or disposal took place (to the extent such information is available on the basis of a complete search of agency files), and 2) include in each deed for the transfer of such property a covenant warranting that all necessary remedial action has been taken before the date of transfer, and that any additional remedial action found to be necessary after transfer of the property shall be conducted by the United States.

It is the view of the Small Business Administration that federal lending agencies which obtain property through foreclosure or settlement, and then hold that property in a custodial manner until subsequent sale, should be exempt from the requirements set forth in Section 120(h) and the proposed regulations. Such a view appears to be consistent with the intent of Congress. Indeed, EPA itself has plainly conceded this fact in the preamble to the initial publication of its proposed regulations, where it is stated:

> it is unlikely that Congress intended the notice and covenant requirements of this section apply to properties obtained by the United States through foreclosure and held in a custodial manner until sale.

53 Fed. Reg. 850, 851 (January 13, 1988).

Despite its understanding of congressional intent, however, EPA is now proposing regulations which would extend the requirements of Section 120(h) of CERCLA further than Congress apparently intended. And such an extension would give rise to unlimited liability on the part of the United States to undertake remedial action with respect to such property of debtors or their guarantors as the United States might obtain through foreclosure or settlement, impose significant financial and administrative burdens on several federal agencies, and raise questions about the funding of such a limitless obligation.

In an extensive letter by the Administrator of this Agency, a copy of which is enclosed, SBA set forth the many reasons why the requirements of Section 120(h) of CERCLA need not, and should not, be interpreted so as to apply to federal lending agencies. And in a recent letter to EPA by the General Counsel of the Department of Treasury, it was concluded by the latter that EPA's proposed regulations "will adversely affect the revenue collection activities of the Internal Revenue Service (IRS) and the law enforcement mission of the U.S. Customs Service." As set forth by the Treasury Department in its letter, a copy of which is also enclosed,

> We strongly believe that neither the section 120(h)(1) notice requirements nor the section 120(h)(3) covenants should apply to real property that is acquired by an agency through foreclosure proceedings, or seized or forfeited pursuant to an exercise of law enforcement authority.

We believe that the term "owner" should not be interpreted by EPA so as to interfere with the missions of SBA, IRS, the Customs Service, and other federal agencies, and to necessitate unwarranted federal expense of unlimited bounds. Despite several discussions with representatives of EPA, however, this matter remains unresolved. Accordingly, in light of the importance of this matter, we respectfully request your consideration of this issue. We are prepared to meet with your representatives, at your convenience, to set forth our concerns in greater detail, and to answer any questions which you may have.

Sincerely,

Larry R. Parkinson

Larry Parkinson
General Counsel

Enclosures

DEPARTMENT OF THE TREASURY
WASHINGTON

NERAL COUNSEL

October 21, 1988

RECEIVED
OCT 28 3 05 PM '88
OFFICE OF LITIGATION

Dear Larry:

I am writing to express the deep concern of the Department of the Treasury with the draft final regulations of the Environmental Protection Agency (EPA) that would implement section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986. As drafted, we believe the final regulations will adversely affect the revenue collection activities of the Internal Revenue Service (IRS) and the law enforcement mission of the U.S. Customs Service.

Section 120(h)(1) requires Federal entities that enter into a contract to sell or otherwise transfer real property that is owned by the United States to include in the contract, to the extent such information is available on the basis of a complete search of agency files, a notice concerning the nature of any hazardous substance that was stored, released, or disposed of on the property. Section 120(h)(3) requires that any deed transferring real property owned by the United States contain covenants warranting that all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer, and that any remedial action subsequently found necessary after the date of transfer shall be conducted by the United States. We further understand that the costs associated with such remedial actions will be borne by the transferring Federal agency.

EPA's draft regulations implement the section 120(h)(1) notice requirements generally by restating the statute and providing definitions. The regulations, however, do not address the applicability of the section 120(h)(3) covenants. To the extent the regulations apply section 120(h)(1) to property that is owned and maintained or operated by the United States in a proprietary manner, we do not object to the regulations and believe that the regulations need not address section 120(h)(3).

With respect to foreclosed, forfeited and seized property, Federal agencies merely act in a temporary custodial capacity. They are, in effect, involuntary creditors for purposes of effecting the sale of the property (although in a few cases an agency is forced to "bid in" to protect its interests and purchase the property for sale at a later date because a sufficient price was not tendered). While such property may be "owned" by the United States, the United States has not maintained or operated the property in a proprietary manner.

We strongly believe that neither the section 120(h)(1) notice requirements nor the section 120(h)(3) covenants should apply to real property that is acquired by an agency through foreclosure proceedings, or seized or forfeited pursuant to an exercise of law enforcement authority. Indeed, EPA's own preamble to the underlying notice of proposed rulemaking states that

> . . . EPA believes that it is unlikely that the Congress intended the notice and covenant requirements of [section 120(h)] apply to properties obtained by the United States through foreclosure and held in a custodial manner until sale. [emphasis added]

Notwithstanding this interpretation of congressional intent, EPA's proposed and draft final regulations would (with one very limited exception for residential property) impose the full force of section 120(h) on property acquired by foreclosure, forfeiture or seizure. We are particularly concerned because the IRS annually initiates foreclosure and sale proceedings on 5,000 to 8,000 parcels of commercial, residential and other real property. These proceedings are initiated pursuant to tax liens in order to collect unpaid taxes owed to the United States. Similarly, the U.S. Customs Service seizes a significant (and increasing) amount of real property in the context of its law enforcement mission. The potential liability of these agencies through operation of the section 120(h)(3) covenants is enormous and could seriously jeopardize collection of the revenue and law enforcement efforts.

By failing to exempt such activities from the covenant requirements of section 120(h)(3), the regulations require any agency that acquires real property through foreclosure, forfeiture or seizure to assume an unknown level of financial responsibility for remedial actions pursuant to the section 120(h)(3) covenants. Moreover, we are concerned that agencies, in order to attempt to accurately assess potential liability under section 120(h)(3), will be forced to undertake costly environmental audits on many parcels of seized, forfeited, or foreclosed property. In the case of the IRS, such costs could significantly reduce the net revenue recovered by the Government through foreclosure activities, particularly when the taxes to be collected through the sale of foreclosed property are significantly less than the market value of the property.

The notice requirements of section 120(h)(1) will unnecessarily hamper the law enforcement activities of the IRS by inhibiting the revenue collection activities that involve the foreclosure of real property. For example, the IRS comes into possession of considerable amounts of information concerning a taxpayer and the taxpayer's business and activities during the course of investigations prior to initiating foreclosure proceedings. We are very concerned that the section 120(h)(1) notice requirements will interfere with the efficient administration of IRS revenue collection activities if revenue officers are required to search through these records prior to the individual sale of 5,000 to 8,000 parcels of real property annually.

For these reasons, coupled with the fact that EPA has acknowledged that it has discretion in implementing section 120(h) by exempting from section 120(h)(1) a limited category of residential real property acquired by agencies through foreclosure proceedings, we believe that sound fiscal and policy considerations require that EPA, consistent with its own interpretation of congressional intent, exempt from section 120(h) all seizure, sale, foreclosure, or forfeiture activities administered by Federal law enforcement agencies.

We would be glad to meet with you to discuss these concerns further.

Sincerely,

Mal

Mark Sullivan III
General Counsel

The Honorable Lawrence J. Jensen
General Counsel
Environmental Protection Agency
401 M Street, S.W.
Room 537
Washington, D.C. 20460

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 16 1989

Honorable William K. Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington D.C. 20460

Dear Mr. Reilly:

On July 18, 1988, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12291 review a draft proposed rule entitled "Environmental Standards for the Management, Storage and Land Disposal of Low-Level Radioactive Waste and Naturally Occurring and Accelerator-Produced Radioactive Waste."

This draft rule would establish requirements for the disposal of low-level radioactive waste. In the course of our review, the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) expressed concern about several provisions in the draft proposal. In November, EPA and NRC staff began meeting to attempt to resolve these differences. We understand that these negotiations reached an impasse in January. As a result, the two agencies agreed to draft a joint letter to OMB outlining each agency's concerns and positions.

EPA and NRC have spent over two months drafting the letter and it is unclear when it will be completed and submitted to OMB. Therefore, for the record, I have suspended review under Executive Order No. 12291 pending receipt of the letter.

Sincerely,

/S

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

cc:

APR 28 1989

Mr. William Reilly
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

On October 11, 1988, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12291 review a draft proposed rule entitled "Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities."[1]

This draft major rule is the first step in developing a comprehensive regulatory framework for the remediation of contaminated hazardous waste sites under sections 3004(u) and (v) of the Resource Conservation and Recovery Act. It will establish when and how a corrective action program must be implemented, including procedures for deciding (1) the levels of contamination that must be remediated, (2) the method for controlling the source of the contamination, and (3) the method for treating and/or disposing of contaminated material.

On March 20, I met with Lewis Crampton and Sylvia Lowrance of your staff to discuss a variety of topics. Several questions arose from that meeting:

(1) Remedy Selection Factors - Does the draft proposal place undue emphasis on so-called "permanent" remedies at the expense of other factors which should also receive consideration, such as short-term effectiveness and cost? To what extent will the reliance on source controls such as incineration result in increased risks to human health and the environment?

(2) Point of Compliance - The draft proposal would set the point of compliance for ground-water contamination at the waste unit boundary (rather than the fenceline of the facility). Could this significantly limit the choice of remedies, eliminate alternatives that could provide the same degree of protection, or cause unnecessary delays that endanger human health and the environment? How much would requiring cleanup of groundwater within the facility boundary (up to the edge of the waste unit) increase costs? What additional risks to human health and the environment are eliminated by this requirement?

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[1] Regulation Identification Number 2050-AB77.

(3) Cleanup Target - The draft proposal would establish as a cleanup target a range for maximum lifetime risk of cancer of one in ten thousand (10-4) to one in ten million (10-7). Given that a risk level of 10-7 is substantially more stringent than the risks generally regulated by other Federal agencies, what are the merits and problems of adopting a risk range for cleanup of 10-4 to 10-7?

(4) Cost - EPA estimates this rule will cost $7.4 billion, including $3 billion in Federal budget outlays. How plausible are these cost estimates? The Department of Energy currently estimates, for example, that corrective actions for its own facilities will cost tens of billions of dollars. Are there similar problems in EPA's estimate of cleanup costs for non-Federal facilities?

(5) Benefits - Can EPA provide a more specific estimate of the benefits that reasonably could be projected to arise from the draft proposed rule?

Your staff indicated they would re-examine the rulemaking in light of our specific concerns. Since this review is taking longer than I anticipated, I have, for the record, suspended review under Executive Order No. 12291 until your review is completed.

Sincerely,

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

# VI. REGULATORY IMPACT AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

## A. Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out H.R. 3838 as amended by the committee.

### *Numbers of individuals and businesses who would be regulated*

The bill modifies existing tax provisions of the Internal Revenue Code in ways to facilitate compliance with the Federal income tax laws and reduces the number of individuals required to file tax returns.

### *Economic impact of regulation on individuals, consumers and business*

The provisions are not intended to have a regulatory impact on substantive economic activities of individuals, consumers or businesses, other than through the provisions that are designed to improve the administration of, and compliance with, Federal income tax laws.

Many provisions of the bill as amended will reduce the opportunities to avoid taxation and to fail to comply with the tax laws. Other provisions decrease the tax benefits available through various credits and deductions. The net effect of the changes will be to decrease the role of the Government and to increase the role of private capital markets in determining the allocation of investment funds among business activities.

### *Impact on personal privacy*

The provisions generally do not relate to the personal privacy of individuals. The bill does provide for the exchange of tax information with certain large cities.

### *Determination of the amount of paperwork*

Any change in the amount of paperwork that taxpayers may have to do is related to their financial status and the nature of their investments, which afffects the complexity of their tax returns as well as the comparative difficulty of their compliance with the provisions in the Internal Revenue Code. The bill as amended will remove more than 6 million individual taxpayers from the Federal tax rolls, which will reduce the paperwork burden on those individuals.

The increase in the standard deduction will significantly reduce the number of individual taxpayers that itemize deductions on their tax returns, which will simplify their tax compliance and the

IRS administration of such tax returns. Likewise, the elimination of the sales tax itemized deduction, the increased floor under certain employee business medical expense deductions, the disallowance of the deduction for miscellaneous expenses, the 1-percent floor under certain employee business expense deductions, and the repeal of income averaging will further simplify individual tax return preparation and IRS administration. Fewer taxpayers will need to have outside assistance with preparation of their tax returns.

The compliance provisions will result in improved administration of the tax laws and greater efficiency in collecting correct tax liabilities.

## B. Other Matters

### *Consultation with Congressional Budget Office*

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the revenue and outlay estimates (shown in Part III of this Report), and submitted the following statement with respect to the budget effects of H.R. 3838 as amended by the committee.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, May 29, 1986.*

Hon. BOB PACKWOOD,
*Chairman, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In accordance with Section 403 of the Congressional [illegible] Act as amended, the Congressional Budget Office has reviewed the Tax Reform Act of 1985, H.R. 3838, as ordered reported by the Senate Committee on Finance with an amendment in the nature of a substitute. CBO concurs with the Joint Committee on Taxation (JCT) estimates of revenue effects. CBO has estimated the costs of the policy initiatives for tax compliance and administration.

Because the bill would remove the need for annual appropriations by giving the Internal Revenue Service direct spending authority via establishment of a Tax Administration Trust Fund, CBO estimates shown here include total IRS spending over the period instead of the outlay effects of the initiatives only as shown in Table III-2 prepared by the Joint Committee on Taxation. Because of this difference, the CBO estimates of outlays shown below exceed those included in Table III-2 by $20.3 billion over 1987-1991. Over the 1986-1991 period, H.R. 3838 would add $21.4 billion to the deficit relative to current law. Because this includes $18.9 billion of IRS outlays that are in the CBO baseline, the net deficit increase relative to the baseline would be $2.5 billion.

The total budgetary effects of the bill relative to current law are shown below.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 2 1989

Honorable Jeff Bingaman
United States Senate
Washington, D.C. 20210

Dear Senator Bingaman:

Enclosed is the Administration's Information Collection Budget for fiscal year 1989. This "paperwork budget" establishes the FY 1989 goals for each Federal agency for reducing the burden of paperwork on individuals, businesses, and State and local governments. The budget also provides a final accounting of the paperwork reductions that were accomplished during FY 1988.

We are pleased to report that, in FY 1988, we reduced the information collection requirements in existence at the end of the preceding fiscal year by 5.7 percent, exceeding the Paperwork Reduction Reauthorization Act's goal of 5 percent. Although this reduction in existing collections was partially offset by new collections, the Federal government nevertheless achieved a net reduction of 62.6 million hours.

The expected reductions for FY 1989 are not as great as those achieved in FY 1988. In FY 1989, the Executive Branch expects to achieve a reduction of 51.8 million hours in previously-existing collections, and will add new information collections of 38.5 million hours. The smaller reduction anticipated for FY 1989 results primarily from congressionally-mandated information collection requirements. For example, an increase in statutory requirements for just one agency will add over 45 million hours of paperwork burden by increasing the scope of existing information collections as well as requiring entirely new information collections.

The substantial progress in paperwork reduction that we achieved in FY 1988 and have made since 1981 (over 500 million hours have been eliminated) would have been impossible without the support given to us through the Paperwork Reduction Act of 1980 and its reauthorization in 1986. We intend to continue our efforts to ensure that necessary and useful data will continue to be collected while eliminating unnecessary paperwork. We hope that our efforts continue to earn your support and approval.

Sincerely,

Jay Plager

Jay Plager
Administrator
Office of Information
and Regulatory Affairs

Enclosure

I enjoyed our visit and look forward to working together —

# COMMUNICATIONS POLICY AND THE PUBLIC'S RIGHT TO KNOW PUBLIC ACCESS TO ELECTRONIC PUBLIC INFORMATION

BY

JERRY J. BERMAN

## I. Introduction

The "public's right-to-know" about the business of government is a fundamental principle of our democratic government and open society. In the present era of computerized government information, this right will only be insured if public law and policy guarantee and expand citizen access to electronic public information.*

Over the past two decades, the federal government has systematically exploited computer and communications technology to conduct its business more effectively, efficiently, and economically. In the process, federal agencies have converted public information from paper documents and data files into electronic database systems. Federal agencies routinely manipulate this computer data to fulfill agency missions from determining the taxes owed by citizens to calculating eligibility for social security benefits. A growing number of agencies require businesses and corporations to provide data collected for regulatory purposes in electronic formats and in turn the government fulfills its information disclosure responsibilities by disseminating electronic public information through government, commercial, and non-profit interactive computer and communications networks.

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* In this essay public information is defined as federal government information which is either disseminated by federal agencies or which must be disclosed under the laws of the United States. Thus, it does not include government created or collected information which is exempt from disclosure under the Freedom of Information Act, such as classified national security information or personally identifiable information which would violate individual privacy. Citizen access to electronic public information under state law is beyond the scope of this essay.

This fundamental transformation of public information and public decision-making into computerized data processes has occurred without serious public policy attention being paid to how it may affect the public's right to know. Moreover, there has been no public policy debate or concerted effort initiated to resolve electronic information policy issues with citizen access rights as a core concern.

This debate is of critical importance today. As federal officials tout the potential emergence of wholly "paperless" agencies by the year 2000, the laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date. The Freedom of Information Act, the principal federal information access statute, was enacted prior to this full-scale government computerization and was crafted to resolve citizen access rights to published information or to printouts from computerized files.

The Paperwork Reduction Act of 1980 was designed to stream-line federal information resource management in part through increased government computerization. The Act offers little guidance on how federal information management goals should be achieved in relation to public access rights to electronic information.

When these statutes were enacted, it was valid to assume that government policy did not have to consider such a right of access. The ability to own and use powerful computers capable of receiving, storing, and manipulating government electronic data was beyond the economic and technical reach of most of the constituencies that seek and use government information to conduct their business or monitor government decision-making. In the last several years, however, the "PC Revolution" has brought advanced computing power within the reach of most citizens and organizations who use government data. Today, small businesses, public interest groups, the press, and other users of government information do not have to rely solely on published public information or "printouts" of computerized government data. They possess the technical potential for receiving and analyzing electronic public information.

If this potential is to be realized, the constituencies that principally rely on published government information first need to understand their stake in achieving effective access to electronic public information. Public policy that supports citizen access rights to electronic information will not be instituted until constituencies committed to the public access rights actively work to formulate and implement such a policy.

A principal purpose of this essay is to describe through concrete examples how citizen access to computerized government data can be a powerful tool for monitoring government and private sector decision-making which affect important public interests. The Environmental Protection Agency's effort to implement a congressionally mandated database to disseminate information on toxic chemical emissions into the environment will provide a vivid case in point.

The case for new electronic information policy also involves public awareness of how traditional access to published government information, as well as computerized public data, may be compromised if public rights to electronic information are not instituted. As this essay documents, outmoded government information law and policies are creating new forms of government secrecy in the computer age and inequities between different constituencies in terms of their ability to afford, access, and use electronic public information.

To establish why expanding public access to electronic public information through on-line databases and other information technology mediums should be a public policy goal is only the first step.** Significant legal, policy, and practical issues need to be addressed and resolved by the Congress and the

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**Throughout this essay, public access to electronic public information should be understood to broadly include access to public information available through online databases, tape, floppy diskette, CD Rom, or other electronic storage mediums.

Executive Branch before effective access will be realized. This essay attempts to identify some of the critical electronic information access issues and sets out a number of policy initiatives and proposals for addressing them. It also recommends policy initiatives to achieve the ultimate goal---an "electronic" Freedom of Information Act.

## II. Electronic Government and Who It Serves

The federal government today is ushering in the era of electronic government by developing electronic information collection, processing, and dissemination systems. Federal government expenditures for information technology and electronic data systems are increasing at a significant rate. In 1982 the federal government spent $9.2 billion for information technology. Recent estimates indicate that expenditures for electronic data systems have now reached over $15 billion annually.[1]

As the government transforms public information into electronic formats and databases, this information is then made available to the public by government and commercial information providers.[2] By one estimate, there are over 440 government databases disseminating electronic information to the public today.[3] The Commerce and Labor departments provide on-line databases of significant business and labor statistics and reports. The Census Bureau makes statistical data and reports available over its CENDATA system. The Commerce Department's National Technical Information System (NTIS) distributes tapes and diskettes of scientific research reports and statistics. The

National Library of Medicine, a government agency which markets information in many ways similar to a commercial firm, offers a number of on-line technical information databases through its MEDLARS electronic dissemination system.[4]

Commercial information industry providers such as DIALOG, MEAD Data, and BRS are principal disseminators of electronic public information.[5] As government data increasingly resides in electronic mediums, these firms actively seek out and obtain government computerized data, add "value enhancements" to make the data more useful and "user-friendly" and sell it to commercial subscribers. They also serve as "gateways" for public systems by offering their subscribers many of the government databases available directly from federal agencies.[6]

The development of these public electronic databases greatly enhances the ability of those who access these government and commercial systems to monitor government activity and regulatory affairs. They permit users to access time-sensitive data, search through document databases to seek out and rapidly find relevant information, and work with data subsets to perform complicated statistical and data analysis.[7]

If the federal government's development of electronic public information systems were guided by an overall policy to enhance public access, one would expect to find evidence of government-wide programs to implement electronic data systems to serve a cross-section of public constituencies. For example, one might find major electronic projects underway not only to disseminate information about business, scientific, and business regulatory affairs but also electronic data relating to government programs and decision-making in areas such as environmental protection, law enforcement, and occupational health and safety. In developing these databases, policymakers would be wrestling with issues of pricing to insure that interested constituencies could afford to use these information systems. They would also be exploring necessary system requirements to make these databases readily accessible to computer users who are not proficient in computer skills.

Instead of government-wide programs, the major federal agency electronic collection and dissemination systems under development are concentrated in the business and regulatory area. Significant federal expenditures are targeted for the development of electronic systems such as the Patent Office's Automated Trademark System, the Federal Maritime Commission's electronic tariff filing system, the Department of Transportation's International Tariff Filings, and the Security and Exchange Commission's Electronic Data Gathering System (EDGAR).[8] For example the EDGAR system, which will handle over 6 million pages of security filings per year, making the SEC potentially the first "paperless" agency of the future, will cost $50 million dollars over the next five years.[9]

While the development of these systems will serve important governmental interests, the principal government policy objective has been to improve the efficiency and cost effectiveness of its regulatory operations. These systems have that potential because there are commercial markets for this information since it is vital to business and regulated industries. This potential in turn has spurred members of the growing information industry to develop partnerships with government to design and build these major systems and to work to structure them in ways which will permit them to develop commercial markets for this data.[10]

The government's preoccupation with cost savings over public access considerations is amply demonstrated by the initial efforts to establish an Automated Trademark Office. Even though the rates charged for electronic databases are a major factor in determining who may be in a position to afford to use them, the Patent and Trademark Office tried to minimize the government's cost to develop an Automated Trademark system but in a way which would make it expensive for potential users. As documented in a House Government Operations Report, the Patent and Trademark Office attempted to satisfy its internal needs for electronic trademark data by entering an agreement with a private information contractor under which the Trademark Office would use the system at no cost in exchange for which the private contractor would have the exclusive right to sell the electronic trademark data to all others under non-competitive conditions. This "bartering" arrangement, which had the potential for creating a private information monopoly over electronic trademark data, was successfully opposed by a members of Congress, user groups, and other information vendors.[11]

In contrast, the SEC's EDGAR system has been designed to meet government needs for electronic data but to broaden public access to EDGAR data through a diversity of information sources and competitive pricing. EDGAR, the product of give-and-take between SEC officials, the Congress, and information industry representatives, is viewed as a possible model for future electronic information systems.[12]

As structured, the SEC will expend appropriated funds to establish the basic EDGAR system. All "value-added enhancements", such as sophisticated search capabilities and menus which make the system user-friendly, will be developed by the contractor who markets the EDGAR data commercially. However, to prevent the development of a private information monopoly and create a "level playing field" among competitors, the statute governing EDGAR mandates that other information vendors may purchase the EDGAR data at the marginal cost of reproduction, add-value enhancements, and also market the data. As the information will be available through a diversity of sources, it is anticipated that competitive pricing will make the system affordable to many potential users.[13]

The EDGAR system constitutes an important step in the development of electronic information policy options because it avoids the creation of an information monopoly and insures a diversity of EDGAR data sources. However, it does not resolve critical issues about how to design and implement electronic information systems that insure broad public access to electronic information.

While the public at large may be uninterested in security filings and studying "10-B forms," public interest groups, investigative reporters, and academic researchers may well want access to this information. While competition among vendors may bring the cost of the EDGAR database systems within the reach of the general public, there is no guarantee that it will. If it does not, the government will in effect have developed a sophisticated information system which disseminates the most useful version of public information only to the affluent.

The EDGAR system's provision for general public access to the database demonstrates this point. While the commercial user "dials-up", "down-loads", and manipulates EDGAR data, the public user who may not be able to afford these services may use public terminals. However, they are available at only three locations---the SEC Headquarters in Washington, D.C. and at its New York and Chicago regional offices.[14] Of course, not all interested users are located within easy reach of these SEC reference rooms. Moreover, the system will be a basic version of EDGAR which permits reading files and searching through the database but will have none of the "value-added" enhancements such as analysis capability which likely will be available through the commercial systems.[15]

This may be adequate public access for security data. However, it will not be sufficient for meeting public access needs for the electronic dissemination of data of importance to wider public constituencies. For example, EDGAR's public access requirements would not provide sufficient public access to electronic data disseminated by agencies such as the Food and Drug Administration[16] or the Environmental Protection Agency.[17]

The larger issue is whether electronic data systems will only be developed when the system is cost-effective because there is a ready commercial market for the information. If this is the case, it is difficult to foresee the circumstances under which the government will develop major systems on its own initiative dealing with health, education, and welfare---areas of vital public importance but where the profitability of electronic data dissemination is uncertain. In such circumstances, public access and use may have to be underwritten by "fee waivers" or reduced fees similar to those available under the Freedom of Information Act.[18]

One response is that the federal government is establishing electronic information systems responsive to broader public interests. In fact, a few government agencies are making efforts to provide citizens with inexpensive on-line databases of public information and reports.[19] These include agencies which have a statutory obligation to disseminate information to the public such as the Census Bureau, the Department of Agriculture and Department of Education.[20] Some agencies will even do computer searches for citizens who lack computer skills or provide some user training in how to use their databases.[21] But these systems are not the principal recipients of federal electronic information expenditures or the focus of information policy managers. The government is doing little to inform citizens about these programs or to make them user-friendly. It does not even provide a printed or computerized listing of available government databases.[22] Thus, a computer user may be surprised to learn that some government databases may be directly available from an agency at half the price of accessing these same databases through a commercial network.[23]

The federal government is not going to develop government-wide electronic information systems responsive to broad public information needs on its own initiative. In the same way citizens achieved access to published government information, public constituencies will have to make a political demand for access rights to electronic government information and address the legal barriers and public policy assumptions which today limit their ability to share in the benefits of the emerging electronic government.[24]

## III. Legal and Policy Barriers to Public Access to Electronic Public Information.

Today, citizens have broad statutory rights of access to published government information but no clear right to electronic public information. The Freedom of Information Act, the principal statute establishing citizen rights to public information, was enacted in 1966 and significantly amended in 1974.[25] While the legislation was considered when the government was in the process of computerizing its internal operations, it was not yet contemplated that the computer revolution would soon give citizens tha capability of accessing and using computerized public information. Thus, the provisions of the Act are crafted exclusively in terms of citizen access to published data. While the legislative history of the 1974 amendments deal with government computerization, the drafters did so only to make it clear that the Act required federal agencies to conduct reasonable searches of their computerized databases and produce "printouts" of public records subject to disclosure under the Act.[26]

In 1980 Congress passed the Paperwork Reduction Act which has since guided government computerization.[27] The Act, designed to minimize the federal paperwork burden on citizens and "minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information"[28] encourages federal agencies to use advanced computer and communications technology to accomplish these missions. In the statement of purposes, the Act makes no mention of using this technology to serve the goal of enhancing public access to information in the computer age. The aim of federal information technology management is to:

> ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and whenever practicable and appropriate, reduces the information processing burden for the Federal Government...[29]

Under the Paperwork Reduction Act, the authority for developing and implementing "uniform and consistent information management policies" is vested in the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).[30] In December 1985, OIRA published its final version of OMB Circular A-130 on "The Management of Federal Information Resources" which sets out current federal information policy assumptions, procedures, and guidelines.[31]

As a statement of federal government management policy on electronic collection and dissemination, Circular A-130 adheres to the mandate of the Paperwork Reduction Act. It contains no policy assumption to support or enhance broad citizen access to electronic information. Circular A-130 recognizes the value of the public's right to know by stating that "knowledge of their government" is essential for citizens and a means for ensuring "the accountability of government." It also states that "the free flow of information from the government to its citizens and vice versa is essential to a democratic society."[32] But the federal information management policy set forth in Circular A-130 assumes that the public's right to know is satisfied if citizens have access to published information.[33]

Circular A-130 defines access to information as the function of providing citizens, "upon their request", with government information which they are entitled to under law.[34] In managing federal information resources, Circular A-130 states that this "right to access government information must be protected..."[35] As already noted, however, the Freedom of Information Act does not establish a clear public right of access to electronic data.

While judicial interpretations of the FOIA have held that computer data may be subject to the Act,[36] the courts have ruled that the government is not obligated to provide citizens with the electronic version of public information.[37] If the information is available in published and electronic format, the government may choose which to provide in fulfilling its FOIA responsibility to respond to citizen requests for public record information.[38]

Circular A-130 incorporates the assumption that citizens are not entitled to electronic public information into its policy on information dissemination. A-130 states that information should be disseminated to citizens "as required by law."[39] The problem again is that there is only one federal statute---Title III of the 1986 Superfund Law---which explicitly requires the federal government to make electronic public information available to the public on-line and through other electronic information technology means.[40]

Circular A-130 has significant public policy implications for public access to electronic information since OMB's information resource management policy objectives include the active encouragement of federal agencies to develop electronic database collection and dissemination systems for their internal purposes and for disseminating information to the public. However, under A-130, the justification for developing electronic information systems is to achieve government efficiency and cost savings rather than to expand the public's right to know. As Circular A-130 states:

> Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; for example, an agency's shift to electronic filing of reports, perhaps carried out primarily in order to improve internal information management, might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government and also improve the performance of the agency's information access function.[41]

To achieve cost savings and efficiencies, A-130 requires federal agencies to place "maximum feasible reliance on the private sector for...dissemination of [information] products and services."[42] Before agencies embark on developing electronic information systems, they also are required to examine private sector services to avoid possible duplication.[43]

While the requirement that federal agencies rely on the private sector for the development of information products and services has been criticized by some as detrimental, in and of itself, to public information rights,[44] this is not the principal policy barrier to advancing public information access rights. In many cases, the private sector information industry may develop or offer more economical and useful information products and services than the government could develop on its own. Instead, the fundamental barrier to public access to electronic information is A-130's requirement that

> where the information is already substantially available in printed form, agencies may consider dissemination in electronic form to be a service of special benefit the costs of which should be recovered through user charges.[45]

This, in effect, amounts to a public policy which permits the development of electronic information dissemination systems but structured in ways detrimental to public access. The government is encouraging federal agencies to develop governmental electronic information systems in partnership with the private sector information industry but to minimize the cost to the government by passing much of it on to the end users. Even though this may create price barriers that make electronic data systems unaffordable and inaccessible to most citizens, government policy assumes that access rights are not infringed or affected because "the information is already substantially available in printed form..."

Under Circular A-130, the only circumstances under which a government agency has an obligation to develop electronic data systems which make them readily accessible to the public at large through fee waivers and reduced charges is when an agency has

> a positive obligation to place a government [information] product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some recipients from the charge.[46]

However, since there are no general statutory requirements for federal agencies to disseminate electronic information to citizens when a printed version is available, the policy is inoperative.

To underscore the present government's assumption that citizen access rights are met by merely providing published information, one other facet of OMB information policy is worth highlighting. Circular A-130 points to the depository libraries as serving as an information "safety net" for the citizenry. As stated in the Circular:

> The depository libraries provide a kind of information safety net to the public, an existing institutional mechanism that guarantees a minimum level of availability of government information to all members of the public. Providing publications to the depository libraries program complies with the law and costs executive agencies virtually nothing.[47]

In the context of present federal electronic public information, the "safety net" is shredded from the outset. The definition of "publication" in A-130 does not include electronic data tapes, diskettes or other electronically formatted information products. In effect, federal agencies are merely required to supply paper documents to the depository libraries.[48]

## IV. Government Secrecy in the Computer Age

In this advanced era of computerized government, the failure to establish or clarify citizen access rights to computerized data is having a negative impact on the public's right to know. As already stated, public policy barriers are in place which may deny many citizens effective access to public information which the government affirmatively makes available through electronic databases. The uncertainty of citizen rights to computerized data is also acting as a legal impediment to citizen access to both published and computerized versions of government information and transactional data which federal agencies do not want to make public or only consider making public when a citizen makes a request for it.

Transactional data involves the specifics of how the government "transacts" government affairs from dispensing welfare to meeting its legal mandate to collect taxes or clean up the environment. It is the information which citizens seek under the Freedom of Information Act. Obtaining access to it is critical for protecting open government and insuring government accountability. However, because the disclosure of this data often subjects the government to public criticism, agencies often attempt to resist citizen efforts to make it public by claiming that it is "exempt" from disclosure under the FOIA.[49]

Today, citizens are finding that the government is using computerization and the uncertain status of citizen rights of access to electronic information under the FOIA as a new means for keeping information secret both in published and computerized form. A "technology of freedom"[50] threatens to become a "technology of secrecy."[51]

Traditional Access Rights and Computer Secrecy

As citizens ply the government for published information about sensitive matters such as the enforcement of health and safety laws or on-going scientific research which may have national security implications, the government is using the fact that transactional information is today stored in databases which require new programming or complex computer queries to extract it as a roadblock to access. Citizens are finding that some sensitive transactional data is no longer readily accessible from agency "records" subject to disclosure under the FOIA.

The potential for a new form of secrecy in the computer age was broached as early as 1974 in a seminal article by Professor Alan Westin. In "The Technology of Secrecy,"[52] Westin observed that in computerizing its operations, the government was not motivated by a concern about the impact of computerization on public access to information. After interviewing agency officials, Westin determined that while computerization was making it no more difficult and sometimes more easy for agencies to meet citizen demands for information under the Freedom of Information Act, these public access results were

> essentially by-products of the primary goals of improving data services to clients and management. Improving the production of information to other parties, such as the press or public interest groups investigating government operations, was not a goal of computerization. Several of the agency replies stated this explicitly.[53]

Westin worried that unless government made public access a goal of computerization by insuring that computers were programmed to extract information valuable to citizens it was possible that citizens would not achieve the benefits of computerized information processing but instead encounter new forms of government secrecy. In attempting to interest policy makers in the issue, Westin gave concrete examples of how appropriate public access programing could enhance the public's right to know as well as examples of how the failure to require such programming could impede access.

To illustrate the positive case for access to computerized information, Professor Westin used an example provided by Ronald Plesser, then working with Ralph Nader, of data that would have been "difficult if not impossible to get from the previous manual file."[54]

> When the Nader Congress project was under way in 1972, the researchers wanted to find out what stocks were owned by each Congressman and candidate for Congress in 1972. But Mr Plesser noted, 'We would have had to go through 10,000 files to get the names.' However, the Nader group learned that the SEC had a name-access program for this ownership file, and asked to have a list compiled of each Congressman and candidate for Congress in 1972....[T]he Nader group persuaded the SEC to supply the list, and it aided the Nader Congress research greatly.[55]

To illustrate the possible negative implications for public access if government computers were not programmed to respond to specific citizen requests for information, Westin again used the Nader group experience:

> [T]he Nader associates [Plesser and Harrison Wellford] cited several examples where files had been computerized, but the absence of a software program to produce the desired information prevented them from obtaining the data they needed....[One] example involved meat-inspection reports and pesticide data. The Center for Responsive Law won the right to inspect these at the Agriculture Department. Some of these data were computerized, but when the Center wanted information on a statewide basis, it was told that it would require costly reprogramming which, Mr. Wellford observed, was 'beyond our ability to pay.'[56]

As Westin emphasized:

> The Nader group experience underscores the fact that more information of the kind sought by public interest groups is potentially available in the computerized files than had been provided in manual records. But where the agency has not provided software programming to extract what these groups want, it is not yet clear under interpretations of the Freedom of Information Act whether a demand can be made that such expensive reprogramming, often interfering with vital computer services, can be required of the government.[57]

If citizens could not demand access to computerized data as a matter of right or did not make it a public policy objective of government to develop computer systems to enhance citizen access to information, Westin feared that advancing computerization of government operations might continue to be "a case of lost opportunities and...potentially great danger..."[58] to the public's right to know.

In 1974, when Congress amended the Freedom of Information Act, citizens did not demand and the final statute did not require the government to program its computers to insure that public information would always be available. Although legislation was proposed by democratic Senator Lee Metcalf to mandate such a requirement, it was not included in the final 1974 amendments to the Act.[59] While the legislative history made it clear that agencies would have to search through computers for "records" subject to disclosure, neither the Act nor the legislative history dealt with the right of citizen access to transactional information which may reside in a pool of computer data rather than the computer equivalent of a manual record file and which would require new software programming or complex computer manipulations to make it available in ways responsive to citizen requests.

Westin's worry that the public's failure to develop citizen access policy for computerized data might pose "great danger in the future" has even greater resonance today.[60] Citizens concerned about health and safety and other public matters are discovering that the computer can become a "black hole" for contested public information. Here are some recent illustrations of this dangerous development.

Recently, Public Citizen filed an FOIA lawsuit against the Occupational Safety and Health Administration (OSHA) to challenge its withholding of public information on grounds that it would require reprogramming to access it.[61] Public Citizen describes several instances in which citizens have sought records from regional offices of the OSHA relating to such matters as inspection data on companies within a certain geographic region only to be informed that the documents no longer existed in published form or if they do, are more readily retrieved from OSHA's central computers operated by OSHA's Office of Management Data Systems (OMBDS).[62]

OMBDS has taken the position that to access the information would require it to "reprogram" its computers. Because federal agencies interpret "reprogramming" to mean the "creation" of a new record and that the creation of new records is not required under FOIA,[63] OMBDS has told these requesters that they must "pay the computer programming costs which often run into hundreds and even thousands of dollars."[64] If the document existed in published form, it would not be a new record and the requester would be entitled to a fee waiver. Public Citizen is litigating the issue of whether or not this reprogramming is a reasonable search within the meaning of FOIA and thus required to be conducted without cost to the requester.

The critical public access issue is posed by OSHA's acknowledgement that "[w]here information is sought by occupational hazard or subject matter investigation...information cannot always be produced with existing agency programs..."[65] The public policy question that must be resolved is whether OSHA, or any other government agency, can "turn its computer system into a black hole for information that would otherwise be accessible under the FOIA."[66]

Recently, officials at the Department of Energy denied the existence of public information on similar grounds. The National Security Archive, a public interest group, learned that the Department of Energy(DOE) maintains a series of reports on microfiche and requires recipients to "agree to limit access...only to those persons and organizations authorized to receive them."[67] The Archive filed a FOIA request for the list on the grounds that this was public information subject to the Freedom of Information Act.[68] DOE responded that "there is no list that covers the items."[69]

As the National Security Archive pressed its case, it turned out that the "limited access list" could be produced but not without reprogramming DOE computers to retrieve it. On appeal, the Department of Energy's Office of Hearings and Appeals held in favor of the National Security Archive and ordered the list produced on the grounds that the reprogramming was a reasonable search under FOIA.[70] Nevertheless, the troubling issue is the initial "no record" response to the Archive's request. Unless computer programming issues are resolved by the courts or by law, this can become a common agency response to requests for information under the FOIA in the computer era and signals the emergence of a new form of government secrecy.[71]

Government Secrecy and Electronic Data

While citizens have always understood the power of the government to use computers as a tool of analysis and query, only recently have some outside the business and scientific community come to realize that the ability to analyze electronic public data is within their own capabilities. Owning inexpensive yet powerful personal computers and complex search software programs, these new computer age investigators and government "watchdogs" are requesting access to electronic public data from the government to monitor and investigate government decision-making. For example, Professor Susan Long, Director of the Center for Tax Studies at the University of Syracuse and David Burnham, an investigative reporter, are seeking to establish an institution to gather important government transactional electronic data to study government operations and to make both their analyses and the data available to other reporters, researchers, and citizens interested in doing computer studies of government decision-making.[72]

Without an established legal right of access to computerized public information, these efforts to obtain computerized transactional information to do complex and unprecedented studies of government may be compromised. Federal officials, resistant to the idea of citizens using computers to probe the inner workings of government, have fought diligently to block citizen access to computerized information.[73]

Professor Long has had to litigate several cases with the government to win access under the FOIA to computerized "transactional information" from the IRS. In 1979 she won an important case which gave her access to the IRS computer program which determines who will be audited.[74] Using the computer tapes for analytical purposes, Professor Long has conducted studies which demonstrate, for example, that the mathematical formula which the IRS uses to select returns most needing audit does a poor job. In another study, she used computer analysis to show that citizens in one part of the country are more likely to be audited than in another.[75]

In a recent case, however, where Professor Long sought computer data of IRS return information stripped of personal identifiers to protect privacy, the government won a Ninth Circuit Court decision denying her access to the computer data. The case was decided in part on the Court's acceptance of the government's contention that the request for the data without personal identifiers to protect citizen privacy was a reformulation of the information and was thus the "creation" of a new agency record which is not required to be disclosed under the FOIA.[76] Assuming that privacy rights could be protected, the only logical reason (in addition to the usual refrain of government that it would be costly and time-consuming) why the government fought the case is its fear of what citizens might be able to learn about government from using and manipulating computerized data.

The federal government's recognition of the power of computers to delve into the public business and its fear of public access to sensitive computerized information is best exemplified by its recent effort to restrict public access to "unclassified but sensitive" computer data to protect national security and other federal interests. Some proposals to restrict access to this data were based on the assumption that the public has no right to the electronic version of government data.

In September 1984 President Reagan issued a secret National Security Decision Directive 145 (NSDD 145) giving the Department of Defense government-wide responsibility over protecting telecommunications and computer security.[77] In 1985 a DOD official testified that the genesis of NSDD 145 was the recognition that

> [v]irtually every aspect of Government and private information is readily available to our adversaries---unfriendly governments and international terrorist organizations are finding easy pickings in the flood of unprotected telecommunications and automated data processing information afloat in this country."[78]

That same official, in a interview with the Washington Post, stated that the government was concerned about more than what our "adversaries" might be doing with computer data.

> I'm very concerned about what people are doing--and not just the Soviets. If that means putting a monitor on Nexis-type systems, then I'm for it. The question is how do you do it technically without unnecessary interference.[79]

Pursuant to NSDD 145, the government issued a National

Telecommunications and Information Systems Security Policy which defined "unclassified sensitive information" broadly to include:

> information the disclosure, loss, misuse of which could adversely affect national security or other Federal Governmental interests. National security interests are those unclassified matters that relate to the national defense or the foreign relations of the U.S. Government. Other government interests are those related, but not limited to the wide range of government or government-derived economic, human, financial, industrial, agricultural, technological, and law enforcement information, as well as the privacy or confidentiality of personal or commercial proprietary information provided to the U.S. Government by its citizens.[80]

At the same time, DOD officials announced that to limit foreigners and citizens from using computers to delve into this information in ways which might adversely affect federal interests, they were not only considering monitoring who uses government and commercial computer systems but

> limiting the availability of on-line data in government databases; placing selective limits on who may access government databases; refusing to release or sell... [some]...data in electronic form; licensing government database information subject to restrictions on access or further dissemination; contracting with private database companies to provide database services subject to restrictions on access or further dissemination;...[and]...reclassifying data already disseminated to private data vendors...[81]

Congress and a broad public interest and information industry coalition roundly condemned NSDD 145 and DOD's plans as a threat to the free flow of information. As a consequence, the policy directive defining unclassified sensitive information was rescinded[82] and legislation was passed to restrict DOD's authority to set computer security policy for unclassified data systems.[83] The government has also retreated from implementing the proposals to limit access to computer data.

Nevertheless, the government at some future time might again claim it has authority to impose such access restrictions. For example, it might try to take sensitive technical database tapes off the shelf of the National Technical Information Center or use licensing schemes to restrict the usage of public computerized data---exercising what amounts to defacto copyright controls over public information.[84] It could base these actions on the case law which suggests that electronic data is exempt from the FOIA or that the public is not entitled to data in electronic form if a hard copy is available.

In fact, the Department of Commerce today attempts to limit through contractual arrangements the sale of database services to companies likely to transfer the information to any foreign third party[85] and the National Library of Medicine offers public information databases to the public under licensing restrictions similar to those used for copyrighted materials.[86]

With the government acting as if it owned public electronic data and with citizens having no established legal right to that data, the ability of citizens to obtain and use electronic information for analytical purposes which the government thinks might harm some federal interest or prove embarrassing to an agency cannot be taken for granted today.

## V. Democratizing Access to Electronic Public Information: The Environmental Protection Agency's Toxic Release Database

The ultimate case for establishing a legal right of access to electronic is to enhance the public's right to know. But since most citizens have not used on-line government databases,[87] they need concrete examples of why acquiring rights of access to electronic public information is a matter of what Tocqueville termed "self interest rightly understood." Now, for the first time a vivid demonstration is within reach. As a matter of law, the Environmental Protection Agency must soon make significant transactional information on toxic chemical emissions into the environment available to all citizens by electronic means.

This essay deals with the EPA database in considerable detail. The statute's provisions, the process EPA is following to deal with information providers and potential users of the database, and the way in which significant policy issues are being identified and resolved are important precedents for developing federal information policy in the era of electronic government. These developments are also potential guideposts for future efforts to establish rights of access to electronic public information.

## The TRI Database: The First Public Access Database

In 1986 Congress passed the Superfund Amendments and Reauthorization Act (SARA).[88] With toxic disasters like Bhopal and Love Canal in mind, Congress was determined to strengthen the power of states, localities, and citizen organizations to make the government and industry clean up toxic waste dumps and prevent future disasters. As part of SARA, Congress passed Title III, the "Emergency Planning and Community Right to Know Act of 1986."[89] Title III establishes statewide and local community emergency planning agencies and includes a number of important industrial information reporting and disclosure requirements to provide both government and citizens with information about toxic chemicals in the environment. Over 30,000 industries are required to file reports on their storage and use of over 300 toxic substances. They must state how much and in what manner these toxic substances are emitted into the environment on an annual basis.[90]

In a groundbreaking precedent for the public's right to know, the Act includes the first federal statute which requires a federal agency to collect significant public data and then disseminate it to citizens by electronic means. Pursuant to Section 11023 (j), the Environmental Protection Agency (EPA) Administrator is required to

> establish and maintain in a computer database a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunications and other means to any person on a cost reimbursable basis.[91]

While other federal databases are "accessible" to the public on a "cost reimbursable basis," the SARA Conference Report makes it clear that Congress intends EPA to develop the national toxic chemical database (now referred to as the Toxic Release Inventory or TRI Database) principally to accomplish Title III's "community right to know" objectives rather than goals of economy and efficiency. In this regard, the SARA Conference Report states that while the Administrator may charge "user fees" for accessing the database, they must not be "prohibitive." More important, like the Freedom of Information Act, the Congress encourages EPA to establish a "reduced or fee waiver" policy for certain requests which are "in the public interest."[92] To protect traditional access rights, the Conference Report states that "other means" includes "responding to reasonable requests for printouts of data for those who do not use or choose not to use computers."[93]

**The Right to Know and Citizen Empowerment**

An EPA official has described how the Toxic Release Inventory (TRI) Database may revolutionize the public's right to know by increasing the ability of citizens to monitor the environment and make government and industry more accountable as Congress intends. In an interview in Chemical Times and Trends, aptly titled "The Revolution Ahead: Public Information on Toxic Emissions,"[94] Charles Elkins, EPA's Director of the Office of Toxic Substances and the official in charge of implementing the TRI database, describes TRI in these terms:

> The program is quite revolutionary when you think about it. We have never had...(this)...kind of information, even here at EPA. As it is said, 'information is power.', and these data will give citizens more power over toxics in their environment...[95]
>
> Specifically, we are looking for the ability for people to sit at their computer terminals, dial up this data base from anywhere in the country, and be able to not only look at each individual emission report, but actually analyze the data. So they could ask questions like:' How many tons of carcinogens are released in the air in my community?' Or how does company X compare to the companies in its standard industrial code.[96]

As Elkins observes, the TRI Database has the potential for altering the traditional power relationships between government and citizens. In the past, citizens have had to rely on EPA for analyses of environmental problems and issues. Title III "really turns this process upside down."[97] Under Section 11023(j)

> EPA collects the data, puts it up on the computer and people analyze it any way they want to. There will be no EPA press release or 'editorial' from EPA. That's the way the statute was written, and our assistance to the community in understanding the data will have to be supplementary to this primary task."[98]

Elkins gives a vivid example of how citizens will be able to act independently of EPA by using the TRI database. Without EPA issuing a report or without making a request for data and waiting for it to be processed under The Freedom of Information Act,[99] a newspaper reporter could access the computer, make queries about a company in a particular location, sort the data in a number of ways, and create unique reports for a story. Under the headline "Local Plant Dumps Toxic Chemicals in Crystal River," the following hypothetical story could appear:

> The ABC Manufacturing Co. in downtown River City dumped more than 200 tons of toxic chemicals, including several cancer-causing substances, into the Crystal River last year according to reports made public yesterday by the U.S. Environmental Protection Agency. The river is the major source of drinking water for River City and most of surrounding Utopia County. The reports also show that ABC, a leading producer of chrome-plated industrial widgets, released nearly 50 tons of toxics into the River City's air in 1987, and sent another 300 tons of potentially poisonous material to the Utopia waste-treatment plant for disposal. Last year, the plant reported to EPA that it stores more than 1,000 tons of hazardous substances within a few blocks of River City High School. On three different occasions over the past six months, plant accidents have released clouds of hazardous and toxic chemicals into the surrounding neighborhoods.[100]

A citizen activist could do the same kind of computer analysis and develop a report on "Crystal River" and release it at a press conference. A public interest group could then use it for purposes of grassroots organizing, protest, or litigation. On the other hand, chemical companies and other industrial firms may produce computer reports to prove that they are obeying the law by emitting safe quantities of toxic chemicals into the environment.[101]

If the TRI Database works as described by EPA, it has enormous precedential value for charting the future course of the public's right-to-know in the electronic age. If it empowers citizens concerned about toxic waste, a public demand may develop to replicate the TRI Database for the purpose of disseminating other important environmental data.

The public might also demand similar databases at other agencies. Instead of pursuing "hard copy" versions of OSHA documents, as Public Citizen is doing under the FOIA today, citizens might work to pass a database statute modeled after TRI to cover computer and hard copy requests for data at OSHA. Soon, civil rights organizations would want to gain electronic access to "transactional data" at the Justice Department and Department of Education to study whether and how civil rights laws are being enforced. Civil liberties groups would want to access computer data from the Justice Department to study how prosecutors are using the federal preventive detention statute in different parts of the country. Conservative groups might want computerized access to federal housing and employment training grants "to demonstrate" that they benefit "liberal elites" rather than the poor or that these programs are not cost effective compared to market solutions.

### Public Access Policy Issues Posed by the TRI Database

Before any of these demands for electronic public information can be met, significant policy issues need to be resolved. As EPA's effort to develop the TRI database demonstrates, making a demand for access to electronic public information is only the first step towards making computer data readily and easily accessible to citizens.

Over the last year and a half, EPA's Office of Toxic Substances has been working to resolve a number of significant information technology policy and technical issues posed by the TRI Database. Without precedent in federal law or practice, EPA is attempting to determine how to satisfy the congressional mandate which requires that the TRI database "shall...[be] accessible by computer telecommunications ...to any person on a cost reimbursable basis." EPA has to resolve how to develop the system within funding restraints so that it is both cost effective and accessible to citizens at rates which are not "prohibitive." EPA also has had to determine whether the government or the private sector information industry should develop the TRI database to meet goals of economy, efficiency, and public access.

### EPA's Policy Consultation Process With Potential Users

From the outset, EPA's Office of Toxic Substances has actively sought to involve interested parties in its deliberations. It has conducted a user requirements survey,[102] issued a public report on its plans and recommendations,[103] and held a public hearing to solicit comments on its development options.[104] EPA regularly consults with environmental organizations, the Chemical Manufacturers Association, and other potential users of the TRI database to resolve conflicts and refine its system design. As a House Government Operations Committee Report on electronic dissemination systems points out, a process of this kind is essential to maximize the possibility that an electronic information system will serve both the needs of government and potential users.[105]

The involvement of the user community is also important to note. If citizens want electronic data systems to serve their needs, they must actively take part in the agency planning process.[106] Since the enactment of Title III, a coalition of environmental groups has been meeting regularly with EPA to express their views about EPA's plans.[107] Taking a lesson from the private sector information industry, the environmentalists have brought in their own technical assistance group, the Public Interest Computer Association, to better understand EPA's system specifications and to work with them and EPA to insure that the final system will better serve user needs.[108] Their involvement has been welcomed by EPA and is likely to improve the final system design.

The EPA Process for Determining How to Develop the Database

On March 4, 1988, EPA issued a "Public Report for Options to Make the Toxic Release Inventory(TRI) Database Accessible to the Public."[109] The Public Report sets out EPA's interpretation of the system requirements necessary to meet Title III's mandate that the TRI database must be "accessible...to any person." It outlines the process EPA followed to explore both government and private sector options for developing the TRI database. It sets out the factors EPA weighed in deciding which option to choose and what level of service to provide. Familiarity with the EPA Public Report is fundamental both to understand how the EPA plans to implement the TRI database and to consider whether EPA's decision-making process and recommendations embody sound public policy for the electronic dissemination of public information.

The Public Report states that EPA explored the feasibility of meeting system or user requirements at three levels of service. As EPA outlines in the Report:

> System requirements were considered in three tiers, i.e. Tiers A, B, and C, where Tier A requirements represent the minimum requirements mandated by legislation and/or specified by EPA, and Tier B and C requirements represent optional enhanced characteristics which are desirable for the TRI public data base to enhance data utility and analysis and display characteristics.[110]

In common parlance, these levels of service may be described as basic, enhanced, and user-friendly. At Tier A, the system would be "accessible," have "aggregation capabilities", and include "search and retrieval" software and minimum "user support." At Tier B users would have in addition "statistical analysis software" and access to "complementary files" for doing more complex analyses. At Tier C, the system would have "menu driven screens," "mapping capabilities," and "crosslinks to EPA data bases."[111]

After establishing the system requirements, EPA attempted to determine the most efficient and cost-effective way to develop the TRI Database. As required by federal law, it considered using other current government information system deigns (for example, the EDGAR system) After determining that existent systems were either too expensive or inappropriate for the TRI Database, the EPA went on to explore four options.[112]

The EPA considered contracting with the private sector by placing a notice of system requirements in Commerce Business Daily and entered into discussions with two commercial information providers. Second, EPA explored developing the system through Purdue University, a non-profit institution. Third, EPA considered the feasibility of establishing its own electronic Clearinghouse. Finally, it examined the possibility of setting up the system through an interagency agreement with the National Library of Medicine.[113]

After obtaining tentative bids from these entities, EPA weighed which option to choose in terms of four factors. EPA considered: (1) cost to the government, (2) cost to the user, (3) the risk of delays or problems in contracting and implementation, and (4) conformance to system requirements.[114]

After examining the options and what they would cost to meet system requirements at the three levels of service, the Public

Report states that EPA's recommendation is to establish an intergovernmental agency relationship with the National Library of Medicine(NLM). Initially, NLM will provide service essentially at the Tier A or basic level. At the same time, the EPA will make the database tape available through the Commerce Department's National Technical Information Service (NTIS) to "encourage" the private sector to develop alternative TRI database systems.[115]

The Public Report summarizes EPA's reasons for making this recommendation as follows:

> Tier A has been selected because of funding restraints. The EPA planned approach has been to select the...[interagency agreement with the National Library of Medicine]...which has been determined to be the option which most closely provides the best balance of all evaluation criteria established for this analysis. The ...[National Library of Medicine]... option has the potential of providing an 'enhanced system' at the partial Tier B level for the initial implementation, while being funded at the Tier A level.[116]

## EPA's Commitment to an Enhanced User-friendly System

EPA's recommendation to develop the TRI database through the National Library of Medicine (NLM) establishes EPA's fundamental commitment to develop the TRI database as a user-friendly system accessible by most citizens. EPA chose NLM because, compared to other system options, NLM permits EPA to provide "enhanced" service to users at the outset despite EPA's funding constraints. Unlike the EPA Clearinghouse or private vendor options, NLM will provide users of the initial system with access to "complementary files" of "health and environmental effects data" and more user training and support. Moreover, in EPA's judgment, the NLM system is the most cost-effective option for achieving a fully user-friendly system with "menu driven screens" and "mapping capabilities" in the shortest period of time.[117]

Given the complexity of this new technology and citizens' lack of familiarity with it, EPA's commitment to develop an enhanced or user-friendly database is of critical importance. While the computer expert can use sophisticated search software to conduct database queries, most citizens need "value added" enhancements such as "menu driven screens" and prompts to help them navigate through electronic data.

**Resolving System Requirements Issues**

While the Public Report indicates EPA's intent to develop a user-friendly system, it does not provide sufficient detail to permit the public to make an informed judgement on whether the system will be easily accessible by the public when it is operational. Although EPA is proceeding with an interagency agreement with the National Library of Medicine to implement the TRI Database, neither the Public Report nor EPA's preliminary EPA/NLM interagency agreement[118] contain sufficient information or system design specificity for the public to determine whether EPA's recommendations are cost-justified or reasonable. Because system requirements have not been worked out, neither the public nor EPA is in a position to judge whether the NLM system will meet either public needs or EPA's expectations.

For the general public, the fundamental issue is whether the TRI database, when it is up and running, will function in the manner described by EPA. Will an environmentalist, local government official, or newspaper reporter be able to "dial up" the National Library of Medicine and query the database in the way described by the Director of the Office of Toxic Substances? Will they be able to ask and get answers to questions such as "How many tons of carcinogens are released in the air in my community? Or How does company X compare to the companies in its standard industrial code?"[119] The Public Report, instead of answering such public concerns, is written in generalities. NLM will provide the "best benefit for user requirements" but there is no specificity about what NLM will provide.

The generality of EPA's Public Report does not permit the public to determine the soundness of EPA's recommendations on such a fundamental issue as whether or not EPA can implement a user-friendly system within current budgetary constraints. As already mentioned, the Public Report states that because of "funding restraints," EPA will implement the National Library of Medicine TRI database system essentially at the Tier A level of service.[120] But Tier A is by no means user-friendly.

In fact, it may be virtually useless for most citizens. At the Tier A level of service, citizens may "access" the data on 30,000 firms reporting on over 300 toxics but only with search and retrieval software based on "Boolean logic (ie. AND, OR, NOT),"[121] and without menu driven screens, cross links to other data files, and much of any user support (i.e. EPA plans a telephone hotline to answer user questions from around the country).[122]As EPA concedes in its draft interagency agreement:

> It is recognized by both the EPA and the NLM that two levels of users (novice and sophisticated) will want to access the TRI database. While the current user training services and search guides offer excellent assistance to searchers comfortable with searching online systems, additional training which addresses the novice or new searcher will need to be developed.[123]

Yet EPA's justification for limiting the system in this way because of budgetary constraints is not clearly supported by its cost estimates. According to the Public Report's summary of costs, the National Library of Medicine option at Tier A is estimated to cost $437,686 for the first year. At Tier C the cost would be $742,686, a difference of only $305,000. Averaged over a five year period, the cost difference between Tier A and a user-friendly system is estimated to be only $85,000 per year.[124] In fact, developing a user-friendly system from the outset may even prove less costly because it will increase use of the system by making it more accessible to the public.[125]

Given the fact that Congress has appropriated $10 million to implement Title III,[126] and that only a fraction of this total may be necessary to make the computer system accessible by most citizens, EPA's justification for funding only Tier A service appears unreasonable, particularly in view of its commitment to a user-friendly system, the intent of Congress in establishing the database, and EPA's own concerns about providing toxic chemical data without giving citizens the capability of analyzing it.

In enacting the "Community Right to Know Act" which includes the requirement to establish the TRI Database, Congress wanted local governments, planning groups, and community leaders and environmentalists to know about toxic dangers in their communities without having to rely on EPA reports.[127] The database, as the head of the Office of Toxic Substances stated, is intended to make citizens less dependent on EPA's published reports and analyses.[128] Unless citizens can use the database, they will continue to be dependent on EPA for data.

EPA has also indicated that "value-added" enhancements to the TRI Database are necessary to resolve its own concerns. EPA officials worry that citizens may misinterpret the data by translating information about toxic "emissions" into the atmosphere directly into an indication of "exposure" levels. In fact large quantities of toxic chemicals, if handled appropriately, may not threaten the environment. To help citizens understand the data, the head of the Office of Toxic Substances has written about the need to add analytic software to the database (e.g. GEMS, an analytic modeling tool for projecting exposure levels).[129]

Even if the Public Report stated an intention to provide "menu driven screens" or "substantial user support and training," the public would not be able to judge whether the system will be user-friendly. As EPA has not specified what kinds of menu screens it has ruled out at this initial phase, the public would be in no better position to know how it would benefit if EPA spent the additional funds to add such an enhancement unless EPA specifies what the menus would do. A "menu-driven screen" can range from "WELCOME TO THE TRI DATABASE PLEASE READ THE DBASE

THREE MANUAL AND PROCEED" to a series of query screens which assist a user to make a sophisticated search. Similarly, while the draft interagency agreement contemplates NLM providing user training, the agreement does not specify whether NLM will conduct seminars or prepare manuals or both.

The failure to establish detailed system requirements not only places the public at a disadvantage in understanding how the TRI Database will function. EPA has also failed to give NLM sufficient information for it to know what software to purchase or what programming needs to be done. If the TRI Database does not work as EPA contemplates, EPA's failure to specify system requirements may make it impossible to hold NLM accountable.

EPA is exploring whether further enhancements are feasible and attempting to clarify system requirements. This includes specifications covering such matters as how TRI data will be maintained, how user accounts will be administered, software design, query or menu screens, help screens, gateways to other databases, and training and technical support functions.[130] Policy matters such as "fee waiver" standards will also need to be addressed.[131] EPA is consulting with potential users to work through the issues. Environmental groups, assisted by their technical assistance team, are working both with EPA and NLM to refine the draft interagency agreement.

Public Access and Information Policy

The Environmental Protection Agency's potential development of a government funded user-friendly TRI Database has important implications for evolving public policy on government electronic information systems. While choosing the National Library of Medicine, a government agency, to establish an "enhanced" electronic database, EPA has demonstrated that public access rights can be achieved without sacrificing other important public policy objectives. In particular it is possible to build a public access system while giving the private information industry an opportunity to develop the system and insuring that the government does not gain monopoly control over electronic data.

At the same time, EPA's reason for choosing NLM rather than EPA itself or a private sector firm to develop the TRI Database suggests that the current debate over whether the government or the private sector should provide "value-added" systems needs to be reformulated. The principal issue is not whether one sector or the other should develop "value-added" systems but which can do so most effectively in particular circumstances consistent with the goal of maintaining a diversity of information sources.

Public Access Systems and the Private Sector

Under OMB Circular A-130, government agencies are required to place "maximum feasible reliance" on the private sector in developing government electronic dissemination systems to avoid duplication and to insure that systems are developed in the most cost-effective manner. It is important to keep the government from developing databases which the private sector may establish more efficiently and effectively.[132]

Another goal of federal information management policy is to insure a diversity of information sources.[133] The growth of the private sector information industry is important for the economy[134] and a diversity of information sources is essential to insure the free flow of information. Unfair government competition may stifle the private sector and create government monopolies over information. Some contend that this policy objective can be accomplished in most circumstances by limiting the government to developing "basic" electronic databases and leaving all "value-added" services to the private sector.[135]

Fully consistent with Circular A-130, EPA gave the private sector information industry an opportunity to state their interest in developing the TRI Database by placing a notice of the system and EPA's requirements in Commerce Business Daily.[136] While two commercial firms came forward, neither was particularly enthusiastic about the TRI database.

As the Public Report suggests, their cost estimates were very tentative and higher than those projected by the National Library of Medicine and Purdue University. In fact, there is good reason to believe that the commercial firms did not believe there was sufficient government funding or potential market demand to get involved.[137]

However, the position that a diversity of information sources can only be assured if the government is limited to providing "basic" service needs to be reexamined in light of the TRI Database. Assuming that users of the TRI database or similar government systems need a "value added" or user-friendly system,

**how can this be accomplished except by government initiative if the private sector does not want to compete or sees no commercial advantage in a particular database?**

**Since the absence of a commercial market may apply to many potential public databases relating to matters of health, safety, and welfare, the government should be able to develop these databases with "value-added" services without having to wait for a market to develop. Nor should the government have to establish that there is no likelihood that the private sector may be interested before proceeding to establish important electronic databases of government information.**

**Following the EPA example, the government should only have to give the private sector information providers an opportunity to develop the system and then resolve the diversity of sources issue by making the basic database available for private development. As already mentioned, EPA will provide the datatape to NTIS for sale to the private sector at cost in order to "encourage" the private sector to develop other versions of the TRI Database.**

**The public interest is best served by this arrangement. If EPA produces a database that does not work well, there is the potential for private development of the TRI Database. In fact, other sources of TRI data should be encouraged. When sensitive data is involved, such as toxic chemical information, the government may attempt to clamp down on public access to the information. For example, the government could claim more**

information should be unavailable because of the need to protect trade secret information. If this occurs, the more who have a stake in the information, the better the chances are for protecting the public's rights. As discussed earlier, when the government tried to limit public access to "unclassified but sensitive" computer data, a powerful coalition of public interest groups and private sector information providers united to block the government's effort.[138] The best defense against government monopolization of information is through strong broad-based coalitions motivated by a number of "self interests rightly understood."

The Government Role As Electronic Publisher

While the government should be able to develop "value-added" systems, the EPA experience challenges the assumption that the government should become the principal provider of electronic public information.

Although EPA chose another government agency to develop the TRI Database, EPA did so after rejecting the option of establishing its own electronic clearinghouse for toxic data because it would have been the most costly and least useful system to develop. This suggests that in some cases, relying on the government to develop a system may not resolve public access needs. As in the case of relying on the private sector for "value-added" services, looking to the government to do so depends on the particular circumstances. There is no hard rule that resolves how to best disseminate particular electronic information to the public.

According to EPA's Public Report, creating an EPA electronic clearinghouse would have been the option which would have cost both government and users the most. It also posed the greatest potential for delay and ultimately would prove to be the least user-friendly. A principal reason is that EPA has no experience or support structure for disseminating electronic information to the public since electronic dissemination has never been a goal of federal policy. As EPA states in the Public Report:

> The EPA Clearinghouse is at a major disadvantage in regard to user support services, because support infrastructures for public data base access do not currently exist within the Agency and will have to be established for this option.[139]

Never having provided citizen access to its data systems, EPA would have had to contract with commercial firms for hardware, software, and to establish a user support structure. The problem is that this option would cost the most and possibly delay the implementation of the TRI database.

> Contract vehicles exist for most of the hardware/software proposed for the EPA Clearinghouse. However, acquisition of equipment, preparation of the facility, and development of a support group will be time consuming and has the potential to delay...[implementation].[140]

If EPA built the initial Tier A basic system, as a consequence of its internal systems design, the agency would not be able to provide easy access to complementary files. For example, "gateways" would have to be established so that users could access TOXLINE and CHEMLINE at the National Library of Medicine and users would not be able to use them simultaneously with the TRI database. Because other relevant EPA files such as the "National Pollutant Discharge Elimination System (NPDES)" and files on "permits, air releases, etc."[141] are not networked within EPA, extensive costs would have to be incurred to enhance the system.

> It also will require costly and extensive software development to provide access to complementary health and environmental effects files and to crosslink to other EPA files.[142]

With the clearinghouse ruled out and the commercial bids too high, EPA chose the National Library of Medicine option because NLM "has had several years of experience providing user support, training, and marketing for a user community of primary health care professionals"[143] and because it would cost less for users and provide them with ready access to complementary files.[144]

## VI. Summary and Policy Recommendations

Over the last two decades, the federal government has transformed public information from paper documents and data files into electronic database systems. Government information is now being disseminated to the public through government and commercial electronic dissemination systems. Yet there has been no serious public policy debate or concerted effort to resolve electronic information policy issues with citizen access rights as a core concern.

It is of vital importance to initiate this policy debate today. As citizens ply the government for information, they are encountering new access roadblocks resulting from the failure to design and program government computer systems to access information which must be disclosed under the Freedom of Information Act. As citizens come to recognize the value of achieving access to electronic information, they find that they have no clear legal right to the electronic version of public data. At the same time, many citizens can neither afford nor have the skills to use most electronic public information being disseminated by the government today.

The debate is timely. Public demand for access to electronic government information is likely to increase significantly in the next several years as the "PC Revolution" enters a new stage. Already, a growing number of citizens and organizations are starting to use the computer to communicate, analyze, and disseminate information. Organizations are establishing electronic bulletin boards and electronic information dissemination systems.[145] Non-profit communications networks are introducing organizations to on-line communications.[146] New electronic systems such as Reference Point will soon make it easy for groups which have only begun to use computers to communicate and disseminate information to the public through electronic means.[147] Public access to databases will soon be facilitated when the telephone system becomes a "gateway" for electronic information services.[148] As these developments expand the capability to use databases, more citizens will want to access electronic public information.

### Initiating the Debate

The first order of business is to initiate a public inquiry and debate on access to electronic information.[149] The Congress needs to explore the impact on the public's right to know of the federal government's own creation and use of electronic public information for internal governmental processes, as well as the public access implications of government electronic collection and dissemination of information. The Subcommittee on Information of the House Government Operations Committee has held initial hearings on the issue and plans further hearings in the next Congress.[150] The Senate Judiciary Subcommittee on Technology and Law is another appropriate forum. Both Subcommittees have jurisdiction over the Freedom of Information Act. The hearings should identify legal, policy, and technical-practical barriers to citizen access to electronic public information.

## Policy Recommendations

The policy debate should focus on both near and long-term policies and strategies for establishing public rights of access to electronic public information. A series of legislative initiatives need to be considered by both the Congress and Executive Branch.

### A Right of Access to Electronic Information

Congress should establish a right of access to electronic information under the Freedom of Information Act. In doing so, Congress will have to resolve a number of complex issues beyond the scope of this essay. The Congress must grapple with the definition of an agency record, reasonable search requirements, fee waiver policy, and the distinction between providing information and performing analysis of information. It must also insure that access rights are consistent with other FOIA goals such as protecting citizen privacy. As Congress works on these issues, some initial policy initiatives may be taken.

> First, Congress could require by law that if funds are authorized or appropriated for any new internal government database system which contains public information, the system must be programmed to insure that the information is accessible pursuant to the FOIA. All agencies who plan to upgrade an existing database containing public information with appropriated monies shall be required to expend funds to reprogram the database to make public information accessible. For systems developed or upgraded pursuant to this requirement, the government shall thereafter be required to reprogram the system at government expense to satisfy a request for information subject to the FOIA.
>
> Second, Congress can establish a requirement that information which must be published or made available for copying under the FOIA without awaiting a request, such as agency missions, regulations, and decisions should be "accessible to any person by computer telecommunications on a cost-reimbursable basis" similar to the requirement for the EPA Toxic Release Inventory Database.[131]
>
> Third, Congress can amend the FOIA to provide that requesters under the FOIA may access either the printed on electronic version of information which must be disclosed under the Act.

Public Dissemination of Electronic Information

As the federal government develops electronic collection and dissemination systems, it must consider more than goals of economy and efficiency. Electronic dissemination systems must also serve to insure and enhance public access to information.

As discussed earlier, public access requirements may vary depending on the nature of the particular information system.

For example, providing public terminals may be sufficient for the EDGAR system dealing with security filings but wholly inadequate for EPA's Toxic Release Inventory Database. One possible solution is legislation to amend the Paperwork Reduction Act or enactment of specific legislation that would change information management resource policy in the following ways:

> First, require that federal agencies consider "adequate provision for public access" as one of the factors that must be weighed in developing information system plans in addition to factors such as avoiding duplication or looking to the private sector to develop information services and products.
>
> Second, require federal agencies to actively involve potential commercial and non-profit institutions in commenting on agency information system plans both through notice in the Federal Register but also by actively seeking their participation in agency planning deliberations as EPA has done with respect to the TRI Database.
>
> Third, establish system requirements that mandate contractors to submit plans for providing access to non-commercial users such as educational institutions, depository libraries, and other non-profits at reduced rates.

Public access requirements for specific database systems would be established through the give-and-take between federal officials, information providers, potential users, and the Congress.

In addition, enhancing citizen access to electronic public information can be accomplished by also considering other initiatives.

> First, the federal government should be required to establish an electronic and hardcopy index of all public databases which describe their contents, how they may be accessed, what they cost, and what user supports are available. It should be updated annually. The electronic index should be available through the Government Printing Office, the Depository Library

> Program, and NTIS.
>
> Second, the government should be encouraged to establish government-wide open network architecture requirements and standard formats to make databases more easily accessible to citizens.
>
> Third, efforts should be made to develop "electronic pilot projects" through the Depository Library Program. The Joint Committee on Printing, the library associations, and the information industry need to explore "new partnerships."[152]

Finally, legislation can be crafted to achieve public access goals by establishing electronic databases to disseminate data on matters of health, safety, welfare, education, and other matters of public importance based on the EPA TRI Database model.

## VII. Conclusion

These policy objectives will not be easily achieved and some will need to be recast and reformulated after public debate. But if this paper stimulates debate and interest in this important issue, it will have achieved its purpose. In any event, processes are underway which will eventually make citizens users of electronic public information.

At the end of this scenario, one can envision an "Electronic Freedom of Information Act." Citizens dial up the federal FOIA database which has an index of agencies and subjects. The citizen chooses an agency and the computer provides a "gateway" to the agency's FOIA database. Using a user-friendly menu and screen prompts, a citizen should be able to access files already mandated to be made public pursuant to the FOIA. A citizen may also make an electronic request for other public information and "files" electronically maintained by an agency. Within a statutorily specified time, the agency responds to the request by electronic mail to inform the requester that the request is granted and asks whether the requester wants the information delivered electronically or in hardcopy form by regular mail or fax. The citizen responds via an electronic bulletin board that he or she wants the information electronically and enters a credit card number to have an account charged for the FOIA search and reproduction fees. The information is transmitted to the requester's computer.

The citizen may also use the Electronic FOIA at public libraries and through commercial and non-profit organizations who have used the electronic FOIA to make special collections of information on national security issues, childrens' rights, or on FCC or FDA regulatory matters or have incorporated "value added" enhancements which permit basic information to be analyzed and compared in more complex ways.

This electronic information revolution may be in the future but it is not farfetched as the TRI Database exemplifies. Moreover, policy makers are already considering this revolutionary transformation. As the Chairman of the House Government Operations Subcommittee on Information recently stated:

> [T]he new technology is putting considerable pressure on the laws that were passed to regulate Government information policy when information only existed on paper or other hard copy formats. There may soon be a need to recognize the consequences of the new technology. For example, there may be a need to pass an Electronic Freedom of Information Act in order to make certain that the benefits of broad disclosure of

Government information are not lost as Government information becomes electronic.[153]

## NOTES

1. U.S. Congress, Office of Technology Assessment, Federal Government Information Technology: Management, Security, and Congressional Oversight. (Washington, D.C. GPO: 1986), 28.

2. Ibid. ,142-43.

3. Information USA, The Federal Database Finder: A Directory of Free and Fee-Based Databases & Files Available from the Federal Government, 2nd. ed. (Maryland: Information USA, Inc., 1987), 1.

4. Ibid. chap. 1 passim; OTA, Federal Government Information Technology., 143-146.

5. Information USA, The Federal Database Finder, 1-3. In Fiscal year 1985, there were 1,022 agreements by federal agencies for use of 16 major commercial online retrieval systems. The most used services were Dialog, BRS, Lexis/Nexis, Orbit, and Westlaw. Alan F. Westin, Reference Point Prospectus (Unpublished September 1987).

6. Information USA, The Federal Database Finder, passim.

7. U.S. Congress, House. Committee on Government Operations. Electronic Collection and Dissemination of Information By Federal Agencies: A Policy Overview. Report. No. 99-560, 99th Cong., 2nd sess., 1986. (Washington, D.C.:GPO, 1986)

8. Ibid.,passim.

9. Ibid., 3.

10. OTA, Federal Government Information Technology, 142-143.

11. U.S. Congress, Electronic Collection and Dissemination., 47-52.

12. Congress passed legislation to authorize EDGAR and establish system requirements and reporting procedures. Public Law 100-181, Sec.101 (1987) (adding Sec.35A to the Security And Exchange Act of 1934). See U.S. Congress, House, Committee on Energy and Commerce, Securities and Exchange Commission Authorization Act of 1987. House Rep. 100-296, 100th Cong., 1st Sess. (Washington, D.C. GPO: 1987).

13. See the floor statement of Rep. Glenn English, Chairman of the House Subcommittee on Information of the House Government Operations Committee during debate on H.R. 2600. 133 Congressional Record, H7415 (Sept. 10, 1987) (daily ed.).

14. United States Securities and Exchange Commission, SEC Request for Proposals For an Operational Edgar System. Solicitation No. SEC HQ1-86-R-0637 (Washington D.C. SEC: May 7, 1986) C-110-C-112.

15. Ibid.

16. U.S. Congress, House Report on Electronic Collection and Dissemination., 62.

17. For a detailed discussion of the Environmental Protection Agency and public access issues, see pp. ______below.

18. Peter Hernon and Charles R. McClure, Federal Information Policies in the 1980's:Conflicts and Issues. (New Jersey: Ablex Publishing Co. 1987), 179-83.

19. Ibid.

20. U.S. Congress, House Report on Electronic Collection and Dissemination., 13-15, 62-64. Information USA, The Federal Database Finder, passim.

21. Information USA, The Federal Database Finder, passim.

22. OTA, Federal Government Information Technology, 152-153.

23. The average cost of government information databases provided through DIALOG by the private sector is $93.26 while databases provided directly to DIALOG by the collecting agencies costs $45.70 per connect hour. Statement of Dr. Harold B. Shill, Chair Legislation Assembly American Library Association, Hearings on Federal Information Policy before the Subcommittee on Science, Research, and Technology of the House Committee on Science, Space, and Technology, July 14, 1987.

24. Support for the "public's right to know" is a widely shared principal. However, in reality, access rights have not been won easily. The Freedom of Information Act was passed in 1966 but was undermined by agency interpretations. The 1974 Amendments required an override of a veto by President Gerald Ford to enact into law. The Reagan Administration has devoted considerable time and effort to scale back citizen access rights under the FOIA. Peter Hernon and Charles R. McClure, Federal Information Policies.,52-66; Allan Adler, ed., Litigation Under the Federal Freedom of Information Act and Privacy Act. 13th ed. (American Civil Liberties Union Foundation 1988),4-6; Eve Pell, The Big

25. 5 U.S.C. Sec.552 (1982). The Act was partly amended in 1986 as part of the Anti-Drug Abuse Act of 1986. Freedom of Information Act of 1986, Pub. L. No. 99-570,, Title I, Subtitle N, Sec. 1801-1804, U.S. Code Cong. & Ad. News (100 stat.)(amending 5 U.S.C. Sec. 552).

26. Senate Report No. 93-854, 93rd Cong., 2nd Sess. 12 (1974).

27. 44 U.S.C. Sections 3501-3520 (Supp. 1986).

28. 44 U.S.C. Sec. 3501. (Supp. 1986)

29. Ibid.

30. 44 U.S.C. Sec. 3504 (Supp. 1986)

31. Office of Management and Budget, *Management of Federal Information Resources: Circular No. A-130*, 50 *Federal Register* 52730-52738 (December 24, 1985)

32. Ibid., 52736.

33. Circular A-130 has been used by the Reagan Administration to justify severe cutbacks in the availability of public information. See Donna Demac, "Keeping the Citizens Uninformed," in *Government Information: An Endangered Resource of the Electronic Age* (Special Libraries Association 1986) 25-41; John Shattuck and Muriel Morisey, "The Dangers of Information Control," *Technology Review* (April 1986), 70-72; OMB Watch, *Paperwork Reduction: The Quick Fix of 1986* (OMB Watch November 1986); American Library Association, *Less Access to Less Information by and About the U.S. Government: A 1981-1987 Chronology* (ALA 1988). Thus, one is tempted to argue that its restrictive policies on electronic data dissemination are cut from the same cloth. Unfortunately, here the Administration is simply carrying out the dictates of current law. Citizens have not demanded nor won rights of access to electronic data.

34. OMB, *Circular A-130*. Sec. 6(f), 52735.

35. Ibid. Sec. 7(g), 52736.

36. See *Yeager v. Drug Enforcement Administration*, 678 F.2d 315 (D.C. Cir. 1982)

37. See *SDC Development Corp. v. Mathews*, 542 F.2d 1116 (9th Cir.1976).

38. *Dismukes v. Interior*, 603 F. Supp. 760 (D.D.C. 1984); See also *Yeager v. Drug Enforcement Administration*, 676 F.2d 315 (D.C. Cir. 1982).

39. OMB, Circular A-130, Sec. 8(a)(7), 50 Federal Register, 52736.

40. 42 U.S.C. 11023 (j) (Supp. 1988). A discussion of this public access electronic database appears at pages below.

41. OMB Circular A-130, 50 Federal Register, 52547 (Appendix IV).

42. Ibid., 52736.

43. Ibid.

44. Peter Hernon and Charles R. McClure, Federal Information Policies., 164-194. American Library Association Less to Less Information by and About the U.S. Government: A 1981-1987 Chronology. (ALA Washington Office Feb. 1988), passim.

45. OMB, Circular A-130, 52748.

46. Ibid.

47. Ibid., 52748. (emp. sup.)

48. Ibid., 52735.

49. 5 U.S.C. 552 (b) sets out nine exemptions for matters such as classified national security information, trade secrets, and personal information which would violate personal privacy. If the government contends and the courts agree that information sought under the FOIA is within one of these exemptions, the information is not disclosed. See Allan Adler ed., Litigation under the Freedom of Information Act., passim.

50. New communications and computer technologies were so identified in a seminal book on the need to rationalize the new technologies with First Amendment values. Ithiel de Sola Pool, Technologies of Freedom (Massachusetts: Belknap Press 1983).

51. Alan F Westin, "The Technology of Secrecy," in Steven Gillers and Norman Dorsen, eds., None of Your Business. (New York: Viking Press 1974).

52. Ibid.

53. Ibid., 305. (emp. supp.).

54. Ibid., 311.

55. Ibid., 311.

56. Ibid., 312.

57. Ibid., 312.

58. Ibid., 317.

59. Ibid., 319-320

60. See also Alan F. Westin, "Computers and the Public's Right to Know," in *Advances in Computers Volume 17* (Academic Press 1978).

61. *Public Citizen,et.al. v. Occupational Health and Safety Administration* (Civil Action No. 86-0705 U.S.D.C. District of Columbia 1988).

62. Plaintiffs' Memorandum in Opposition to Defendant's Renewed Motion To Dismiss and Motion for a Protective Order And In Support of Plaintiffs' Motion for Partial Summary Judgment, *Public Citizen, et.al. v. Occupational Safety and Health Administration* (Civil Action No. 86-0705 U.S.D.C. District of Columbia), Feb. 2, 1988.

63. Public Citizen cites proposed Department of Labor regulations, 29 C.F.R. Sec. 70.5 which state that "Nothing in [the FOIA] requires any agency or component to create a new record, either manually from preexisting files or through creation of a computer program, in order to fill a request for records." Ibid., 16.

64. Ibid., 3.

65. Ibid., 9.

66. Ibid., 24. Unfortunately, this is not likely to be resolved by the courts since OSHA, under the pressure of litigation, has now discovered that the data can be accessed without reprogramming.

67. *National Security Achieve Request Under the Freedom of Information Act to John E. Carter Chief of FOI and Privacy Acts Office of Administrative Services United States Department of Energy* (September 24, 1987).

68. Ibid.

69. Letter to Quinlan Shea, Jr., National Security Archive from Bonnie C. Carroll, Deputy Assistant Manager for Information Services Department of Energy. (October 22, 1987).

70. Decision and Order of the Department of Energy Appeal by Petitioner National Security Archive. (Case No. KFA-0158) (December 18, 1987).

71. The Department of Energy asked the Office of Hearings and Appeals to reconsider its decision to require reprogramming on the grounds of cost and time. Memorandum To George B. Breznay Director Office of Hearing and Appeals Regarding Freedom of Information Act Appeal filed by the National Security Archive. (Case No. KFA-0146. January 19,1988). The Office reaffirmed its decision. Decision and Order of the Department of Energy Motion for Clarification (Case Number KFA-0158 May 26, 1988).

72. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

73. Even though computerized information has no copyright, citizens have been denied requests for the electronic version of public data. SDC Corporation v. Mathews, 542 F.2d 1116 (9th Cir. 1976) (electronic tapes containing databases of bio-medical literature are not agency records for FOIA purposes and are not available pursuant to an FOIA request). See also Clark v. United States Department of the Treasury and W. M. Gregg, (Civil Action No. 84-1873 U.S.D.C. Eastern D. Penn. 1986)(denial of computer data on treasury bonds even though plaintiff prepared to pay programming costs to extract data). Letter to Honorable C. William Verity Secretary of Commerce from Rep. Glen English (Feb. 19,1988)(requesting explanation why citizen was denied a copy of an on-line database available free from the government). Appeal to Administrator Animal and Plant Health Inspection Service By Public Citizen on behalf of Hillel Grey. (June 15, 1988)(FOIA appeal based on agency refusal to provide revised computer tapes similar to those which plaintiff had previously obtained from USDA because USDA had now decided these were not agency records under FOIA or would place an unreasonable burden on the agency to produce them in computerized rather than published form).

74. See e.g. Long v. IRS, 596 F.2d 362 (9th Cir. 1979), cert. denied, 446 U.S. 917 (1980).

75. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

76. Long v. IRS, 825 F.2d 225 (9th Cir. 1987).

77. Jerry J. Berman,"National Security vs. Access to Computer Databases:A New Threat to Freedom of Information," Software Law Journal ( Winter 1987)(Reprint)

78. Statement of Donald Latham, Assistant Secretary of Defense, Computer Security Policy:Hearings on NSDD 145 Before the Subcomm. on Transportation, Aviation and Materials of the House Comm. on

Science and Technology 99th Cong. 1st Sess. (1985)

79. Michael Schrage, "U.S. Seeking to Limit Access of Soviets to Computer Data," Washington Post, May 27, 1986, at A 18, col.3.

80. National Telecommunications and Information Security Policy No.2, National Policy on Protection of Sensitive, But Unclassified Information in Federal Government Telecommunications and Automated Information Systems (October 29, 1986)

81. Berman, National Security vs. Access to Computer Databases, 9.

82. Ibid., 6.

83. Public Law 100-235.(1988) (The Computer Security Act of 1987)

84. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

85. Berman, National Security vs. Access to Computer Databases, 11.

86. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

87. For example, by one estimate only 1% of all voluntary organizations were users of on-line information services in 1985. Alan F. Westin, Reference Point Prospectus ( Unpublished September 1987), 27.

88. Public Law 99-499 (1986).

89. 42 U.S.C. Sections 1101-11050 (Supp.1988).

90. Environmental Protection Agency, "EPA Announces New Toxic Chemical Reporting Requirements," Press Release (February 8, 1988)

91. 42 U.S.C. 11023 (Supp. 1988).

92. U.S. Congress, House. Conference Report Superfund Amendments and Reauthorization Act of 1986. 99th Cong. 2nd Sess. Rept. 99-962 (October 3, 1986). 299.

93. Ibid.

94. "The Revolution Ahead: Public Information on Toxic Emissions---CMSA talks with EPA's Charles Elkins," Chemical Times and Trends (January 1988).

95. Ibid., 18.

96. Ibid. , 22.

97. Ibid.

98. Ibid., 22-23.

99. Under the FOIA, 5 U.S.C. 552(a)(6)(A)(i), agencies must reply within 10 working days, but some agencies take longer and others have significant backlogs. Allan Adler, Litigation Under the Federal Freedom of Information Act. 12-13.

100. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know' EPA Journal (November 1987) Elkins gives this example to demonstrate some concerns that the data could cause public alarm and be misleading because the chemical releases in the example may not be unreasonable or cause harm since there is no necessary direct correlation between emission levels and exposure levels. Nevertheless, it is a nice illustration of electronic information and computer analyses.

101. Chemical firms are planning just such use of EPA toxic release data. "Pollution:Trying to Put the Best Face on Bad News: Manufacturers Struggle to Cope with a New Disclosure Law," Business Week (July 18, 1988), 76-77.

102. Environmental Protection Agency, Overview of Requirements for the Toxic Chemical Release Inventory (TRI) ( Prepared by CRS Systems, Inc. November 6, 1987).

103. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

104. 53 Federal Register 7567 (March 9, 1988) announcing public hearing on TRI Database public report on March 30, 1988 at EPA.

105. U.S. House, Report On Electronic Collection and Dissemination., 18-23.

106. Ibid. See also Robert Gellman, "Federal Information Practices," in Special Libraries Association, Government Information:An Endangered Resource of the Electronic Age (Special Libraries Association 1986), 22. "You have to be aggressive in guarding your own interest. You should insist on getting involved in the planning. You have to identify your own needs and how these new electronic systems will affect your operations."

107. Founding organizations of the Working Group include the Advocacy Institute, Citizens Clearinghouse for Hazardous Wastes, Environmental Policy Institute, National Center for Policy Alternatives, National Wildlife Federation, OMB Watch, Public Citizen, and U.S. Public Interest Research Group. The Environmental Defense Fund, Natural Resources Defense Council, and Environmental Action Foundation have also joined.

108. The technical assistance arrangement was worked out with the Public Interest Computer Association and the ACLU Project on Information Technology. See Letter to Jerry Berman ACLU and Denise Vesuvio PICA from Carol Dansereau Environmental Action Foundation On Behalf of the Community Right-to-Know Working Group April 22, 1988.

109. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

110. Ibid. Executive Summary. , 2.

111. Ibid. Executive Summary., 2.

112. Ibid. Chapter 2., 2.

113. Ibid. Chapter 2, 1.

114. Ibid. Executive Summary., 4.

115. Ibid. Executive Summary., 4-5.

116. Ibid. Executive Summary., 2.

117. Ibid. Chapter 4., 7.

118. Environmental Protection Agency, EPA/NLM Interagency Agreement: Toxic Release Inventory Public Database (Draft II, June 20, 1988).

119. Elkins Interview in Chemical Times and Trends, 18.

120. Public Report. Executive Summary p.4

121. former footnote 90

122. Report at page _____

123. EPA, Draft EPA/NLM Interagency Agreement., 10.

124. EPA, Public Report. Exhibit 3-2. Chapter 3., 7.

125. The EPA rationale for choosing Tier A may indeed prove more costly. While at one point, the Public Report makes the assumption that user demand is a function of "price," at other points the Public Report suggests that user demand will increase if it is more user-friendly. For example, in weighing fee waiver costs to the government, the Public Report states that those costs will "increase by tier, because usage is expected to increase with improved capabilities." Ibid. Chapter 2., 4. In fact, in estimating costs, the EPA did not take into consideration "usage increases which may result as the result of an expanded user community..." Ibid. Chapter 2., 6. It is therefore possible that by implementing a user-friendly system, system costs to the government could decrease.

126. Elkins, Chemical Times and Trends., 18.

127. 42 U.S.C. Section 11023 states that the database must be "accessible by computer telecommunications...to any person on a cost reimbursable basis." "Any person" must mean that Congress had some kind of user-friendly system in mind. Certainly Congress knows that most citizens cannot use basic computer data and search and retrieval software or statistical software to sort and index data. Nor is it reasonable to assume that Congress added the database requirement so that citizens could "dialup" and access only reports prepared by EPA. The statute states that the database must be accessible by "any person" and not "any person who is a sophisticated computer user." EPA's interpretation of basic requirement of the law appears contrary to congressional intent.

128. See discussion at page ___above.

129. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know'" EPA Journal (November 1987)

130. See Public Interest Computer Association and American Civil Liberties Union, Initial Outline Toxic Release Inventory Database Interagency Agreement (Public Interest Computer Association, Washington D.C. April 26, 1988). The document identifies the range of issues that must be resolved and specified in the interagency agreement between EPA and NLM. EPA and NLM have both expressed the view that this document of system requirements is an excellent basis for serious negotiations. The Environmental Working Group and Chemical Manufacturers have also concurred in this judgement.

131. Environmental Protection Agency, Public Online Access to TRI Data: Discussion of Fee Waiver Criteria (Prepared by Putnam, Hayes & Bartlett, Inc. Washington, D.C.) March 3, 1988

132. OMB, *Circular 130*. passim.

133. Ibid.

134. According to one study, revenues for on-line data bases amounted to $3.65 billion in 1984 and recent estimates indicate that revenues are growing at an annual rate of 15%. See Berman, *National Security vs. Access to Computer Databases*, Note 1, 1. OTA, *Federal Government Information Technology*., 142.

135. U.S. Congress, *House Report on Electronic Collection and Dissemination*. passim.

136. EPA, *Public Report*. Chapter 2., 4-5.

137. Ibid. Chapter 3., 8-11.

138. See discussion of unclassified sensitive information at pages _____ above.

139. EPA, *Public Report*. Chapter 3., 19.

140. Ibid. Chapter 3., 22.

141. Ibid. Chapter 2., 10.

142. Ibid. Chapter 4., 6.

143. Ibid. Chapter 3., 11.

144. Ibid. Executive Summary., 3.

145. Mary Gardner Jones and Nancy Chasen, *The Potential of Telecommunications for Nonprofit Organizations* (Consumer Interest Research Institute Washington, D.C. 1987)

146. On May 11, the Public Interest Computer Association sponsored a meeting of TCN, BITNET, PEACENET, and other non-profit online providers to discuss how to increase service to the nonprofit community. *Memorandum to Participants of the Online Providers Meeting from Denise A Vesuvio, Director, Public Interest Computer Association* (PICA: Wash. D.C. May 11, 1988).

147. Reference Point proposes to establish an on-line electronic clearinghouse for non-profit organizations which would provide electronic directories of members; store and disseminate member documents, reports, and alerts; and provide "gateways" to online government and commercial databases. It is in the developmental stages. See Alan F. Westin, *Reference Point: A National Computerized Database, Communications Network, and Historical Archive FOr the Non Profit Sector and the Active Citizenry* (Prof.

Alan F. Westin 1100 Trafalgar St. Teaneck, N.J. 07666)

148. See Opinion, United States of America v. Western Electric Co. Inc., et.al., Civil Action No.82-0192, slip op.(D.D.C. March 7, 1988).

149. See Frances Seghers, "The $3 Billion Question: Whose Info Is It, Anyway?" Business Week (July 4, 1988), 106-107.

150. U.S. Congress, House, Hearings before a Subcommittee of the Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies. 99th Cong. 1st Sess. April 29, June 26, and October 18, 1985 (Washington: GPO: 1986).

151. 5 U.S.C. § 552a(1) and (2). (1982).

152. See Association of Research Libraries, Technology and U.S. Government Information Policies:Catalysts for New Partnerships (ARL October 1987. The Joint Committee on Printing is circulating a new plan for electronic pilot projects for public comment. See Letter to Members of the Information Community from Rep. Frank Annunzio, Chairman and Wendell H. Ford, Vice Chairman (July 13, 1988) (attaching Dissemination of Information in Electronic Format to Federal Depository Libraries: Proposed Project Descriptions June 1988) The private sector must understand the need to provide electronic databases and products through libraries and the library community has to understand the issues posed by electronic pilots. Since access to electronic information is often the same as disseminating information, a line needs to be drawn to protect electronic publishers from having the libraries become tax-supported publishers of information. While government documents are public and may be copied on a copy machine, this is not the equivalent of electronic "downloading" of data. For example, would a library which has created a database of government documents with an intricate menu system take kindly to a "borrower" asking,not to search the system, but obtain a "copy" of the database so that he or she can mount it on a computer and dispense the information free of charge to anyone who dials up the bulletin board?

153. Statement of Glenn English, Congressional Record, (September 10, 1987) H7415.

# INFORMATION COLLECTION BUDGET

OF THE UNITED STATES
GOVERNMENT

FISCAL YEAR 1989

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 14 1989

This report, the Information Collection Budget for FY 1989, represents the ninth annual "paperwork budget" for controlling the number of hours that individuals, businesses, and State and local governments must spend preparing or maintaining Federally-mandated forms, reports, and records. It provides both an accounting of actual reductions accomplished by Executive Branch agencies during FY 1988 and of the paperwork reductions planned by these agencies for FY 1989.

As this report indicates, in FY 1988 the Executive Branch significantly reduced -- by 62.6 million hours -- the 1.9 billion hours of paperwork imposed on the American public in FY 1987. Our efforts have, in fact, led to paperwork reductions exceeding the goal specified by the Paperwork Reduction Reauthorization Act of 1986.

Unfortunately, the outlook for FY 1989 is not as bright. Court-ordered and congressionally-mandated paperwork requirements over which the Executive Branch has limited control represent a significant and continuing concern for the effective management and control of paperwork. Such requirements will impede the Executive Branch's progress toward meeting the reduction goal for FY 1989, and, as a consequence, we expect a decrease in paperwork burdens of only 13.2 million hours.

We are continuing our efforts to minimize as much as possible the paperwork burden imposed on the American public by the Federal government, and will work diligently in FY 1989 to eliminate unnecessarily burdensome and costly paperwork requirements.

Jay Plager

Jay Plager
Administrator
Office of Information and
Regulatory Affairs

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# INTRODUCTION

Fiscal Year 1989 marks the ninth publication of the Information Collection Budget of the United States Government. Each year this report provides the American public with an assessment of the progress made toward reducing Federal paperwork burdens on the public in the preceding fiscal year, a projection of the expected reductions during the current fiscal year, and a description of program areas targeted by each agency for achieving additional paperwork reductions over a two to three year planning horizon. Most importantly, though, this report represents the end-product of a process for improving accountability to and stimulating participation by the American public in one aspect of Federal governance -- the need to collect information.

Almost every adult American fills out at least one Federally-required form, survey, or questionnaire each year. In FY 1989 alone, nearly 100 million citizens and over 5 million business firms and associations will report detailed information on income and finances to the Internal Revenue Service. Over 80 million Americans will provide detailed information demonstrating their eligibility to receive financial benefits from the Federal government. Thousands of businesses, non-profit organizations, and State and local agencies that must comply with Federal regulatory requirements or that receive Federal grants or contracts will file lengthy reports and applications. In all, Americans will spend over 1.7 billion hours to meet Federal information collection requirements during FY 1989. This is equivalent to employing 850,000 people full time solely to collect, report and maintain information in response to Federal requirements.

The Information Collection Budget (ICB) provides a mechanism for measuring and controlling the costs of the Federal information collection requirements imposed on individuals, businesses, and State and local governments. As a management tool, it plays an important role in the development of effective and efficient Federal information technology programs (automated data processing (ADP), computers, and telecommunications) and agency regulatory proposals.

The ICB is administered by the Office of Management and Budget (OMB), as authorized by the Paperwork Reduction Act of 1980 (Chapter 35 of Title 44 of the United States Code). The Act directs OMB to establish general policies and procedures for controlling information collections, and to report to the Congress at least annually the estimated burden hours imposed by the information collections of each Federal agency. OMB's implementing regulation ("Controlling Paperwork Burdens on the Public," 5 CFR 1320) establishes the ICB as the principal mechanism for accomplishing these and other directives of the Act. The ICB has been instrumental in achieving these directives and has furthered the Act's goal of encouraging high-level responsibility for paperwork reduction within each agency and effective management of information collection resources.

The ICB process requires a balance between the burden on the public of supplying this information and its practical utility in furthering the goals of the Federal government. Initiated as a prototype in FY 1981 and then on a government-wide basis in FY 1982, the ICB utilizes budget procedures -- long familiar in connection with government fiscal expenditures -- to control the information collection burden of public policies on private citizens, State and local government entities, and the private sector.

The ICB is prepared each year in a manner similar to the preparation of the President's fiscal budget. Based upon the prior year's experience and the best estimates of the "burden hours" imposed by each form, survey, and other information collection,[1] each agency submits to OMB a proposed budget or allowance of total burden hours for the new fiscal year, together with a description of changes in existing paperwork requirements that are necessary to meet its needs. In addition, agencies report on paperwork management initiatives, which are designed to improve the flow of information. Agency submissions are followed by OMB reviews, passbacks, and meetings between agency and OMB officials until final budgets that minimize paperwork burden, consistent with program needs and uses of the collected information, are determined.

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[1] Collections of information covered by the Paperwork Reduction Act include reporting requirements (e.g., report and application forms, schedules, and questionnaires), recordkeeping requirements, disclosure and labeling requirements, and other similar requirements. (See 5 CFR 1320.7(c) for a more comprehensive definition.) To determine the burden associated with a particular collection of information, agencies usually develop an estimate of the average time required for a respondent to comply with a specific information requirement and of the total number of respondents who must comply with the requirement. The "total burden" (measured in hours) for a particular information collection is calculated simply by multiplying the average response time per respondent by the expected number of respondents.

During the fiscal year, adjustments and changes to meet the budgeted burden hours are made through the review and revision of specific agency proposals for information collections. There are three kinds of revisions:

- Revised estimates of reporting burdens. Experience during the year may lead to an upward or downward revision in the estimated time required for complying with a particular information collection. Such accounting changes do not reflect real changes in paperwork burdens, but rather an improved measurement of those burdens. Since the actual burden borne by the public has not changed, this type of change is treated as an adjustment in the burden associated with a particular information collection.

- Changes in private use of government forms. The use of many kinds of government forms -- such as application forms for benefit programs, passports, and certain tax elections -- is discretionary. The use of such forms may be greater or less than an agency anticipated at the beginning of the fiscal year. Although such changes reflect changes in paperwork, they are beyond the direct control of the agency and, hence, are treated as adjustments.

- Unbudgeted changes in paperwork requirements. Statutes enacted or policy changes during the year may require new forms or impose new regulatory requirements unanticipated at the time an agency's ICB was prepared. Also, review of individual forms under the Act may uncover new opportunities for paperwork burden reduction. These are real changes in paperwork burden relative to that burden budgeted at the beginning of the fiscal year and are treated as "program changes."

As a part of the ICB process, each agency's budget is examined and adjusted at the end of each fiscal year to determine its actual "expenditure" of paperwork burden hours for that year. This produces the final measure of each agency's record in meeting, exceeding, or falling short of its reduction goal. Each agency's final adjusted total paperwork burden is then used as the "base" for preparing its ICB for the following fiscal year. The adjustment at the close of the fiscal year is the last opportunity to revise the figures prior to the development of the ICB targets for the subsequent fiscal year.[2] During the first few years of administering the ICB, adjustments to the base included substantial revisions unrelated to changes in the paperwork burden. These revisions were due to the gradual incorporation into the ICB of additional kinds of Federal paperwork (such as procurement paperwork, recordkeeping requirements, and regulatory and statutory paperwork). In 1983, OMB published regulations implementing the Paperwork Reduction Act. These regulations defined "paperwork" to include: (1) requirements associated with government procurement of goods and services, (2) testing and other actions associated with labeling and disclosure requirements, and (3) requirements contained in existing regulations. Primarily because of these revisions, adjustments made at the close of FY 1983 produced an information collection base of 2,023 million hours, a large increase over the FY 1982 base of 1,275 million hours.

Inclusion in the ICB of all of these various paperwork requirements is necessary to present a picture of the true burden of Federal paperwork and to develop plans to reduce this burden. The ICB planning process and the Paperwork Reduction Act review process have led to significant burden reductions for all types of paperwork over the past eight years: on net the public would spend over 500 million more hours on Federal paperwork this year in the absence of these procedures.[3] This estimate understates the full achievements of the paperwork budgeting and review processes because, in many cases, reductions in existing requirements have been offset by new, statutorily-mandated information requirements. In FY 1987, for example, new statutory requirements in the areas of tax reform, environmental protection, and immigration reform imposed approximately 174 million hours of additional paperwork burden on the American public. In fiscal years 1988 and 1989, new court-ordered and statutorily-mandated requirements in the areas of workplace safety and environmental protection added or will add approximately 55 million hours and 45 million hours, respectively, to the public's paperwork burden. Excluding these major statutory and court-ordered requirements over which the executive branch has limited control, the cumulative net paperwork reduction achieved through the ICB process would exceed 600 million hours.

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[2] Note that "adjustments" and "changes" to burden are treated differently for determining whether agencies have met ICB paperwork reduction targets during a fiscal year. Only "changes" in the paperwork requirements themselves or in agency policies affecting the requirements are used to determine whether an agency meets its paperwork reduction target, since the Federal government presumably has direct control over this type of change. "Adjustments" -- which presumably reflect no change in the actual paperwork requirement or in agency policy but, rather, in factors such as population growth over which the Federal government has no control -- are added to agencies' burden hour bases at the end of a fiscal year, but are not counted in determining whether an agency has achieved its reduction target during the fiscal year.

The ICB process has also proven to be an effective means for coordinating information management policies. This process highlights the interrelationship of an agency's information collection requirements, regulatory proposals, statutory requirements, and automated data processing (ADP) needs. As part of the ICB process, therefore, OMB asks agencies to review their information management procedures to determine whether they can realize a more effective coordination of regulatory recordkeeping and reporting proposals, the agency's ADP program and systems, and the paperwork management process.

The coordination envisioned by this effort will not be easily achieved, particularly given the traditionally fragmented structure of agency offices and responsibilities and the need to implement the new paperwork requirements being enacted by Congress each year. However, the coordination of these three areas is the cornerstone of efficient information management, and should result in more effective and less costly Federal programs.

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[3] This paperwork reduction estimate refers to the sum of the net "program change" reductions in burden hours achieved since FY 1981. Because of "adjustments" to burden estimates for individual information collections in each of these years and the "adjustments" to the base noted above (i.e., the inclusion of procurement and labeling requirements), these savings do not simply equal the difference between the current base and the FY 1981 base.

In all, the ICB process, while less formal and precise than fiscal budgeting, has proven to be an effective management tool. Because it has stimulated a high (and improving) quality of information management practices within agencies, the ICB process has enabled both OMB and agencies to target paperwork reduction strategies more effectively, to manage the reviews of individual paperwork collection proposals better, and to assess the effect of regulatory reform and ADP initiatives on the paperwork burden borne by the public more accurately.

## SECTION I: PAPERWORK MANAGEMENT IN FY 1988

### Changes in Paperwork Burden for FY 1988

During FY 1988, the Federal government significantly reduced the paperwork burden imposed on the American public, and exceeded the statutory target for reducing the FY 1987 "base" (i.e., those collections in existence at the close of FY 1987). Reductions to the base during FY 1988 equaled 106.3 million hours and amounted to a decrease in those requirements of 5.7 percent. Because new paperwork partially offset this reduction in existing paperwork, the net reduction (the sum of reductions to the base and new collections) was 62.6 million hours. This net reduction equals a 3.3 percent decrease in the paperwork burden imposed on the public in FY 1988 over the burden imposed in FY 1987. As a result of the implementation of burdensome court-ordered and statutorily-mandated paperwork requirements (over which the executive branch had limited control) both the "reductions from base" and the "net reductions" estimates understate the executive branch's paperwork reduction accomplishments in FY 1988, as discussed below.

The burden increases and decreases achieved during FY 1988 for each agency and the Federal government as a whole are shown in Table 1. A comparison of each agency's reduction in existing collections during FY 1988 with the reduction target established by the Paperwork Reduction Reauthorization Act of 1986 is displayed graphically in Figure 1.[4] Sixteen agencies (over 40 percent) achieved the statutorily-established 5 percent reduction target for FY 1988. These are: the Departments of Defense, Energy, Interior, Justice, and Treasury, and the Commodity Futures Trading Commission, the Environmental Protection Agency, Federal Communications Commission, Federal Emergency Management Agency, Federal Energy Regulatory Commission,

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[4] For fiscal years 1987 through 1990, the Paperwork Reduction Reauthorization Act of 1986 established an annual goal of a 5 percent reduction in the paperwork requirements in existence at the close of the preceding fiscal year. Figure 1 and the data in the "reductions from base" column of Table 1 present these data for FY 1988. In addition, Table 1's "net reduction" column shows the net change in paperwork burden (i.e., reductions in existing collections plus new collections) for each agency in FY 1988.

TABLE 1. PAPERWORK REDUCTION IN FY 1988 (in thousands of respondent hours)

| | | | | | | FY 1987-FY 1988 | |
|---|---|---|---|---|---|---|---|
| | | REDUCTION FROM BASE | | FY 1988 NEW COLLECTIONS | | NET CHANGE | |
| | FY 1987 BASE | PROGRAM CHANGE | PERCENT CHANGE | PROGRAM CHANGE | PERCENT CHANGE | PROGRAM CHANGE | PERCENT CHANGE |
| GOVERNMENT TOTAL | 1,881,434 | (106,264) | (5.65)% | 43,708 | 2.32 % | (62,556) | (3.32) |
| DEPARTMENTS: | | | | | | | |
| AGRICULTURE | 69,705 | 245 | 0.35 | 473 | 0.68 | 718 | 1.03 |
| COMMERCE | 11,692 | (554) | (4.74) | 279 | 2.39 | (275) | (2.35) |
| DEFENSE | 283,064 | (19,306) | (6.82) | 49 | 0.02 | (19,257) | (6.80) |
| EDUCATION | 34,540 | (45) | (0.13) | 89 | 0.26 | 44 | 0.13 |
| ENERGY | 10,606 | (1,163) | (10.97) | 41 | 0.39 | (1,122) | (10.58) |
| HHS | 132,082 | (3,527) | (2.67) | 521 | 0.39 | (3,006) | (2.28) |
| HUD | 14,462 | 113 | 0.78 | 2,901 | 20.06 | 3,014 | 20.84 |
| INTERIOR | 7,758 | (447) | (5.76) | 17 | 0.22 | (430) | (5.54) |
| JUSTICE | 40,634 | (18,632) | (45.85) | 2,440 | 6.00 | (16,192) | (39.85) |
| LABOR | 77,432 | 31,620 | 40.84 | 1,072 | 1.38 | 32,692 | 42.22 |
| STATE | 1,773 | (32) | (1.80) | 16 | 0.90 | (16) | (0.90) |
| TRANSPORTATION | 82,277 | (1,081) | (1.31) | 512 | 0.62 | (569) | (0.69) |
| TREASURY | 867,043 | (83,859) | (9.67) | 2,931 | 0.34 | (80,928) | (9.33) |
| AGENCIES: | | | | | | | |
| CFTC | 1,042 | (56) | (5.37) | 0 | 0.00 | (56) | (5.37) |
| CPSC | 319 | (1) | (0.31) | 1 | 0.31 | 0 | 0.00 |
| EPA | 49,835 | (3,246) | (6.51) | 30,459 | 61.12 | 27,213 | 54.61 |
| EEOC | 2,627 | 317 | 12.07 | 0 | 0.00 | 317 | 12.07 |
| FCC | 11,849 | (1,198) | (10.11) | 256 | 2.16 | (942) | (7.95) |
| FDIC | 5,618 | (166) | (2.95) | 15 | 0.27 | (151) | (2.69) |
| FEMA | 737 | (53) | (7.19) | 1 | 0.14 | (52) | (7.06) |
| FERC | 3,813 | (211) | (5.53) | 484 | 12.69 | 273 | 7.16 |
| FHLBB | 1,815 | 116 | 6.39 | 0 | 0.00 | 116 | 6.39 |
| FRB | 7,853 | (747) | (9.51) | 943 | 12.01 | 196 | 2.50 |
| FTC | 64,138 | (8) | (0.01) | 2 | 0.00 | (6) | (0.01) |
| GSA | 630 | (12) | (1.90) | 0 | 0.00 | (12) | (1.90) |
| ICC | 762 | (62) | (8.14) | 0 | 0.00 | (62) | (8.14) |
| NASA | 13,761 | (963) | (7.00) | 1 | 0.01 | (962) | (6.99) |
| NCUA | 5,685 | (5) | (0.09) | 0 | 0.00 | (5) | (0.09) |
| NEA | 313 | (10) | (3.19) | 27 | 8.63 | 17 | 5.43 |
| NEH | 468 | (14) | (2.99) | 8 | 1.71 | (6) | (1.28) |
| NSF | 4,928 | (8) | (0.16) | 0 | 0.00 | (8) | (0.16) |
| NRC | 5,693 | (384) | (6.75) | 0 | 0.00 | (384) | (6.75) |
| OPM | 1,705 | (105) | (6.16) | 3 | 0.18 | (102) | (5.98) |
| SEC | 55,908 | (2,401) | (4.29) | 2 | 0.00 | (2,399) | (4.29) |
| SBA | 2,545 | (297) | (11.67) | 111 | 4.36 | (186) | (7.31) |
| VA | 6,322 | (82) | (1.30) | 54 | 0.85 | (28) | (0.44) |

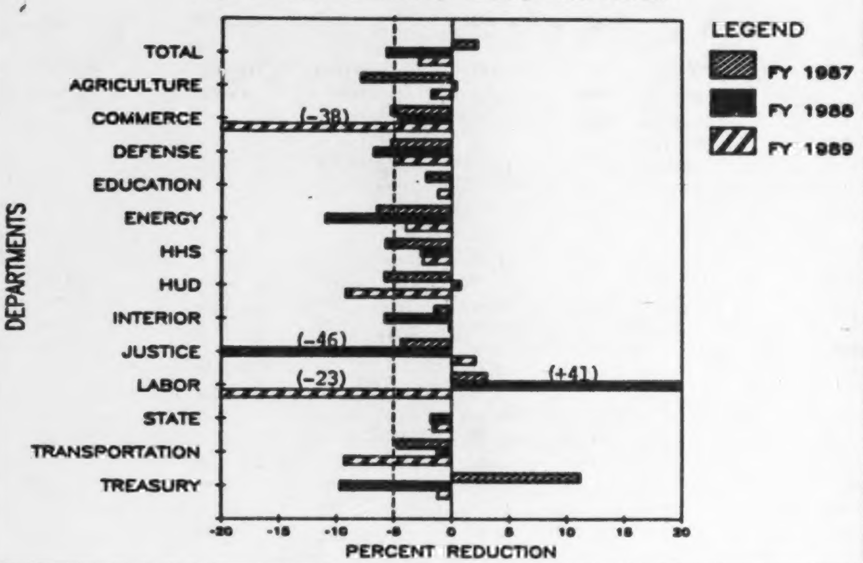

Figure 1
PAPERWORK REDUCTION FROM THE BASE FISCAL YEARS 1987, 1988, AND 1989

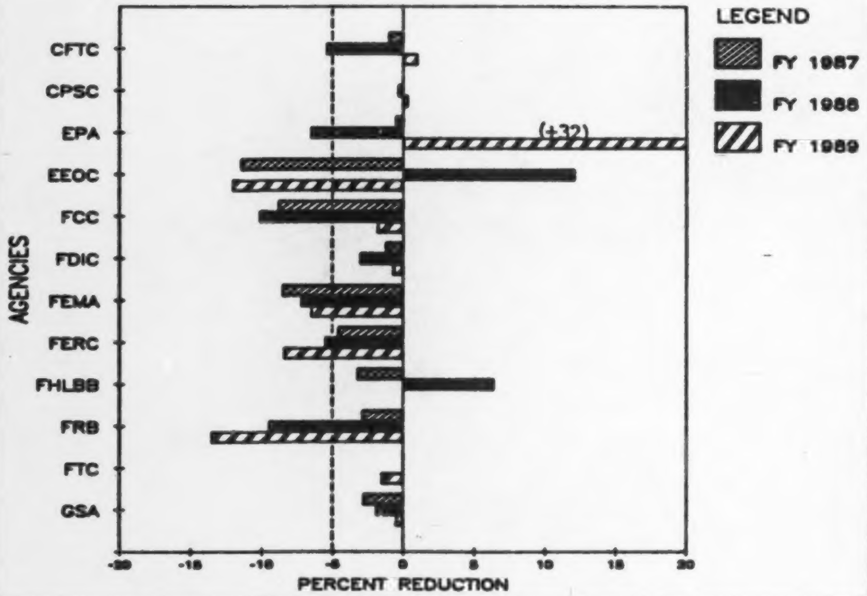

Figure 1 (cont.)

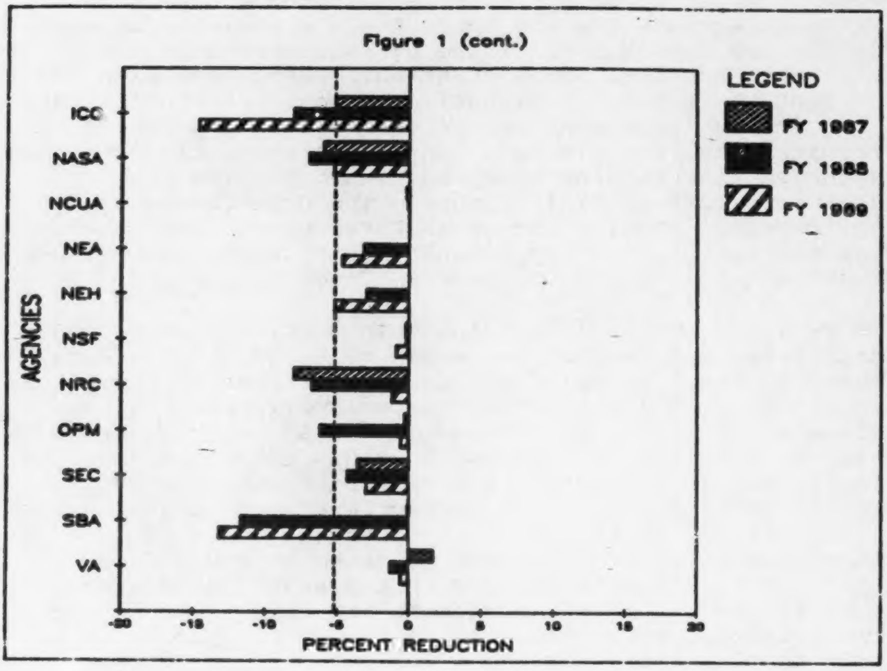
Figure 1 (cont.)
LEGEND
FY 1987
FY 1988
FY 1989
AGENCIES
ICC
NASA
NCUA
NEA
NEH
NSF
NRC
OPM
SEC
SBA
VA
-20
-15
-10
-5
0
5
10
15
20
PERCENT REDUCTION

Federal Reserve Board, Interstate Commerce Commission, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, and the Small Business Administration. Twenty agencies failed to meet the 5 percent reduction target. Fourteen of these agencies achieved some reductions to existing paperwork requirements, and six agencies (17 percent) did not. The agencies that made no progress toward meeting the statutory goal in FY 1988 were: the Departments of Agriculture, Housing and Urban Development, and Labor, and the Equal Employment Opportunity Commission, Federal Home Loan Bank Board, and the Federal Trade Commission.

In reviewing Table 1, the following explanation of the data presented in that table may be helpful. The data shown in the "FY 1987 Base" category represent those information collections that were in existence at the close of FY 1987. These end-of-FY 1987 paperwork burdens are the baseline against which burden reduction progress in FY 1988 is measured. The reduction data included in the "Reduction from Base" category refer to changes (both increases and decreases) that occurred during FY 1988 in those paperwork requirements existing at the end of FY 1987. This column will show an increase for an agency that imposed, through changes to pre-existing paperwork requirements, more paperwork burden on the public in FY 1988 than FY 1987. The "New Collections" column shows the burden imposed by entirely new collections in FY 1988; for example, new collections would result from the implementation of programs or surveys that did not exist in FY 1987. Finally, the "Net Change" column is simply the sum of new collections and changes to existing requirements (i.e., the reductions from base data).

As indicated in this section's first paragraph, the implementation of three particularly significant paperwork requirements mandated by statute or court order in FY 1988 has diminished the Federal government's paperwork reduction achievements shown in Table 1. During FY 1988, the court-ordered expansion of the Department of Labor's Hazard Communication Standard (HCS) added 48 million hours to already existing HCS requirements (explaining the Department's 40 percent increase in the "reductions from base" category shown in Table 1). In addition, the implementation of statutorily-mandated environmental regulations by the Environmental Protection Agency (EPA) added 26.5 million hours in entirely new paperwork requirements (largely explaining the Agency's 55 percent increase in new collections shown in Table 1). In the absence of these requirements, over which the executive branch had limited control, reductions to the base would have been 48 million hours greater (or 154 million hours, an 8.2 percent reduction in the base) and new collections would have been 26.5 million hours less (or only 17.2 million hours).

Besides the FY 1988 reduction data presented in Table 1 and Figure 1, Figure 1 also shows the paperwork reduction progress achieved by agencies in FY 1987 and expected by agencies in FY 1989. Hence, Figure 1 provides an indicator of actual agency performance and expected agency performance in meeting the statutory reduction goal for the first three years of the four year period to which the goal applies. As Figure 1 indicates, four, nine, and eleven of the Federal agencies should meet or exceed the statutory reduction goal in all, only two, or only one of these years, respectively. Twelve agencies do not expect to meet the goal in any year during this three year period: the Departments of Education and State and the Consumer Product Safety Commission, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, Federal Trade Commission, General Services Administration, National Credit Union Administration, National Endowment for the Arts, National Science Foundation, Securities and Exchange Commission, and the Veterans Administration. (For a more detailed accounting of expected paperwork reduction in FY 1989, see Section II of this report.)

## Decreases in Federal Paperwork During FY 1988

Most agencies achieved some reductions in existing paperwork requirements during FY 1988. Some of the most significant reductions in specific information collection requirements are listed below by agency:

### Department of Agriculture

The Department of Agriculture achieved over 700,000 hours of paperwork burden reduction through the elimination of requirements in two of its programs. Legislation passed in May 1988, the "Beef Referendum," eliminated the Beef Producer Refund Request and the Imported Beef Refund Request, leading to a reduction in paperwork requirements of approximately 216,000 hours. In addition, the Department's Rural Electrification Administration achieved over 500,000 hours of burden reduction by revising its construction and engineering plan requirements to replicate the usual and customary information required in the private sector for providing construction funding.

## Department of Health and Human Services

The Department of Health and Human Services achieved sizable paperwork reductions in two program areas. Based on a review of its Good Laboratory Practices rules, the Food and Drug Administration determined that 30 provisions in these rules could be amended or deleted without appreciably reducing data quality. These changes led to an almost 600,000 hour decrease in paperwork burden. The Department also achieved a 500,000 hour reduction in the Uncompensated Services Assurances Report paperwork burden. Both reporting and recordkeeping requirements, which did not affect the Department's ability to monitor the performance of Hill-Burton construction fund recipients in providing care to the poor, were eliminated from the Report.

## Department of Justice

The Department of Justice's Immigration and Naturalization Service (INS) experienced a reduction of approximately 16 million hours in the paperwork burdens originally required by the 1986 Immigration Reform and Control Act (IRCA). That Act imposed two major paperwork burdens -- one on aliens who could apply for the legalization program and the other on employers who are required to verify and maintain records on the employment eligibility of newly-hired workers. The reduction in burden resulted largely from the expiration of one-time IRCA reporting requirements imposed on both respondent categories.

## Department of the Treasury

As a result of decreased reporting requirements for the Internal Revenue Service's W-4 form, the Department of the Treasury experienced a 66 million hour decline in paperwork burden. This reduction resulted from the completion of the one-time statutory requirement (under the Tax Reform Act) that each jobholder complete a revised W-4 form during calendar year 1987.

## Environmental Protection Agency

The Environmental Protection Agency decreased paperwork burdens by 1.8 million hours through the elimination of unnecessary requirements in two of its programs. In its pretreatment program for

Publicly-Owned Treatment Works, the Pretreatment Baseline Monitoring Report was eliminated (with savings of 317,300 hours), because the collection of this information was no longer needed to administer the program. In addition, requirements associated with the Application for New or Amended Pesticide Registrations were reduced by approximately two-thirds (or 1.5 million hours) as a result of the elimination of duplicative information requests and the more efficient utilization of existing information resources by the Agency.

### Federal Communications Commission

The Federal Communications Commission implemented a revised "Uniform System of Accounts for Telecommunications Companies" in FY 1988. Under these revised requirements, the accounting and technological information that must be reported by telecommunications companies and that the FCC uses to monitor the operations of these companies has been reduced, resulting in a 700,000 hour decrease in burden.

### National Aeronautics and Space Administration

The National Aeronautics and Space Administration reduced the paperwork associated with its procurement programs by 826,000 hours. This reduction was achieved through the use of "consolidated" contracts, which lessen the need for technical and other data submitted by contractors.

## Increases in Federal Paperwork During FY 1988

Most of the increase in Federal paperwork in FY 1988 developed from specific recordkeeping or reporting requirements that were imposed by congressional directives, statutory changes, court orders, and other means beyond executive branch control. Major paperwork increases that occurred during FY 1988 include:

### Department of Housing and Urban Development

The paperwork burden imposed on the public by the Department of Housing and Urban Development increased by 3 million hours in FY 1988 as a result of the implementation of several statutory requirements. Almost half of this burden increase is associated with a rulemaking to implement Section 504 of the Rehabilitation Act of 1974. This rulemaking set forth the policies and procedures for ensuring nondiscrimination against handicapped individuals in Federal housing assistance programs, adding 1.4 million hours of paperwork burden. Another rulemaking imposing a substantial paperwork burden in FY 1988 dealt with the implementation of Federal preferences in the provision of housing assistance. This rulemaking, which implemented sections of the Housing and Community Development Amendments of 1979 and the Urban-Rural Recovery Act of 1983, specifies the documentation and verification procedures that State and local governments must follow in providing preferential treatment to housing assistance recipients, and adds over 1.2 million hours of paperwork burden. Finally, the implementation of Section 566 of the Housing and Community Development Act of 1987 expanded the scope of existing lead-based paint testing and abatement requirements for Federally-assisted housing. These increased requirements added 430,000 hours of new paperwork burden in FY 1988.

## Department of Labor

The Department of Labor's Occupational Safety and Health Administration (OSHA) had two major paperwork increases in FY 1988. In August 1987, under court order, OSHA expanded the scope of the Hazard Communication Standard (HCS), which requires employees to be informed of potential chemical hazards in the workplace and to be trained to avoid exposures, from the manufacturing sector to nonmanufacturing sectors. This expansion increased the HCS's paperwork burden by 48 million hours.

In addition, OSHA's new benzene standard became effective in FY 1988, imposing a new paperwork burden of 563,000 hours on firms which use products containing benzene, a suspected human carcinogen. This paperwork burden resulted from requirements associated with environmental monitoring, medical surveillance, and "written programs" for controlling workplace exposures.

## Environmental Protection Agency

The Environmental Protection Agency's paperwork burden increased significantly as a result of new statutory and regulatory requirements. In FY 1988, the Agency issued regulations, as required by the Asbestos Hazard Emergency Response Act, that require all schools to inspect their facilities for asbestos-containing material and to develop and implement management plans for abating identified problems. This program resulted in a 9 million hour increase in paperwork burden. However, the completion of inspections and management plan development under this program should occur by May 1989, reducing this program's paperwork burden by 4.8 million hours. The remaining 4.2 million hours of burden is associated with the implementation of the management plans and will continue beyond May 1989. In addition, the Chemical Inventory Reports paperwork requirement added 4.5 million hours of new burden. Sections 311 and 312 of the Superfund Amendments and Reauthorization Act require this report.

## SECTION II: THE FY 1989 INFORMATION COLLECTION BUDGET

### Characteristics of Federal Paperwork

As of the beginning of FY 1989, the paperwork requirements imposed by the Federal government retain a great deal of consistency with those imposed in the past. Several agencies continue to levy the large majority of information collection requirements on the public. The Department of the Treasury, which includes the Internal Revenue Service (IRS) with its extensive tax reporting requirements, continues to be the largest paperwork agency in the Federal government -- imposing three times more paperwork burden than any other Federal agency (equaling 764 million hours of paperwork burden and 43.4 percent of the Federal total).[5] The Department of Defense, largely as a result of its procurement activities and related paperwork, imposes the second most onerous paperwork requirements of any Federal agency -- 263 million hours of paperwork burden and 14.9 percent of the total.

The top ten paperwork agencies in the Federal government together impose 91.8 percent of the total paperwork burden. Besides Defense and Treasury, the other top ten paperwork agencies are: the Departments of Labor (imposing 7.3 percent of the total Federal burden), Transportation (5.0 percent), Agriculture (4.0 percent), Health and Human Services (3.9 percent), and Education (2.1 percent), and the Environmental Protection Agency (3.9 percent), Federal Trade Commission (3.7 percent), and the Securities and Exchange Commission (3.6 percent).[6] For the most part, these agencies employ information collections to monitor Federal expenditures (e.g., the Department of Transportation's highway programs, the Department of Agriculture's Food Stamp and National School Lunch programs, and the Department of Health and Human Service's Medicare and Social Security programs) or to improve compliance with health and safety rules (e.g., the Department of Labor's Occupational Safety and Health Administration and Mine Safety and Health Administration programs). By contrast, the ten smallest paperwork agencies in the Federal government impose a combined total of 7.8 million hours; this burden represents less than 0.5 percent of the Federal total. (Table 3 of this section provides a more detailed accounting of each agency's paperwork burden and the expected burden changes in FY 1989. Figure 2 provides a graphic depiction of the percentage distribution of burden for major paperwork agencies.)

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[5] During FY 1989, the Department of the Treasury will complete a project in which the burden hours attributable to IRS tax forms will be reestimated. These reestimates will be based on detailed studies of selected forms and will include new estimates for the time needed to keep records, learn about the law, prepare the forms, and copy, assemble and send the forms to IRS. These new burden estimates, which will result in a more accurate measurement of the burden on the public, will be included for the first time in the FY 1990 ICB.

The allocation of paperwork burden by the type of respondent, as of the beginning of FY 1989, is shown in Figure 3 of this section. We note that this allocation did not change during the preceding fiscal year. Businesses and other institutions, such as schools and hospitals, continue to bear the largest portion of the Federal burden -- an estimated 63 percent of the total. Almost one-third of the Federal burden is borne by

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[6] The burden hours attributed to the Department of Health and Human Services (HHS) and the Department of the Treasury decreased as a result of the W-2 and W-3 forms (which these agencies jointly administer) being declared "government-wide" forms by the Office of Management and Budget. Placing these forms in this category decreased the burden attributed to HHS and the Treasury by 34.6 and 54.9 million hours, respectively. Forms are eligible for placement in the government-wide forms category when the following criteria are met: (1) a particular form is used by more than one Federal agency; (2) the form has been used by these agencies for an extended period of time without any public requests for revisions or modifications; and (3) OMB determines that the retention of all data elements on the form is essential to achieve current statutory and regulatory requirements. Forms that have been placed in the government-wide category are removed from an agency's base, the baseline against which an agency's paperwork burden reduction progress is measured, because -- as conditions 2 and 3 above imply -- further reductions in the form's burden are not currently feasible.

Figure 2
PERCENT OF REPORTING
BURDEN BY AGENCY
(as of October 1, 1988)

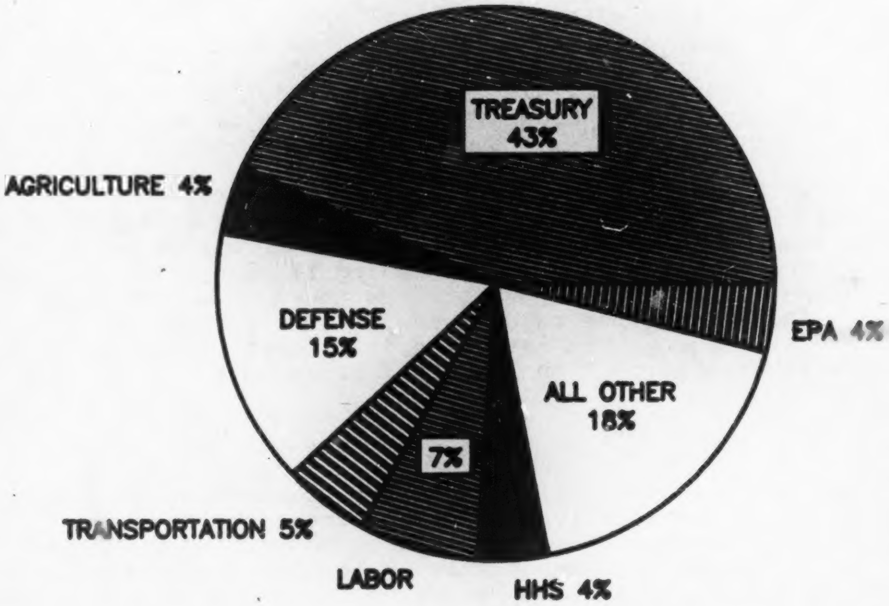
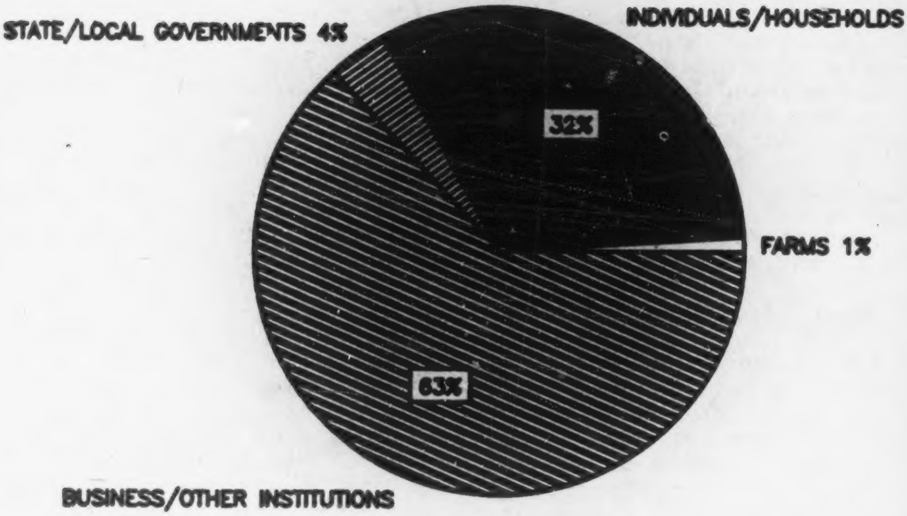


Figure 3
PERCENT OF REPORTING BURDEN
BY RESPONDENT CATEGORY
(as of October 1, 1988)



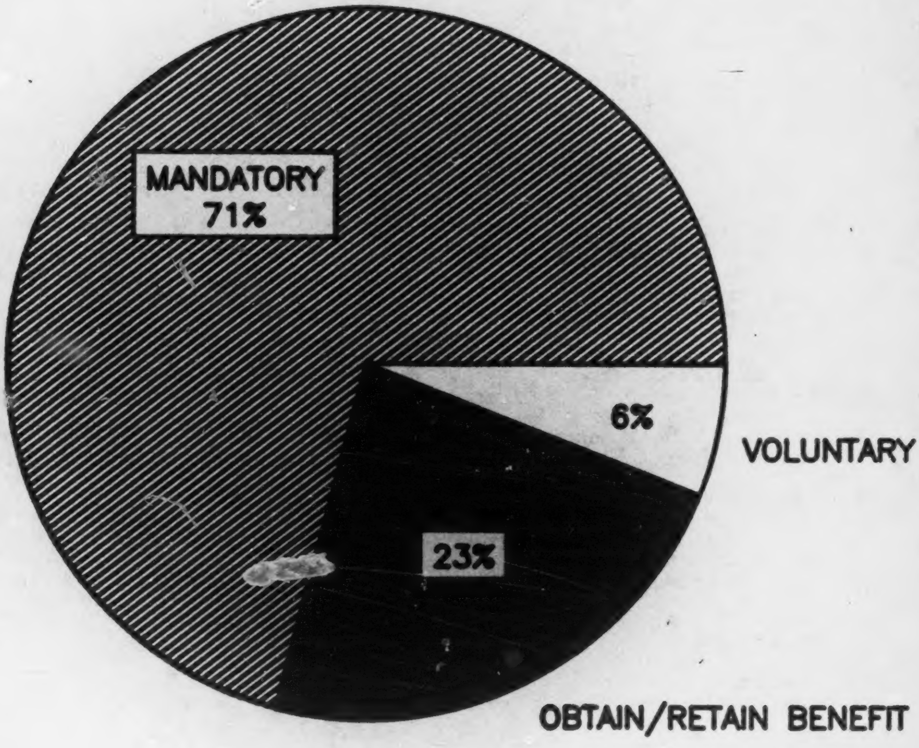
individuals and households, resulting largely from requirements such as tax reporting. State and local governments and farms bear the smallest portion of the Federal paperwork burden -- 4 percent and 1 percent, respectively.

Figure 4 of this section indicates the allocation of paperwork burden by the type of information collection requirement. Mandatory information collections -- collections for which penalties may be assessed against respondents for non-compliance (e.g., census and tax reporting) -- account for 71 percent of the Federal paperwork burden. These collections constituted 70 percent of the Federal total at the beginning of FY 1988, and represented just 57 percent of the total in FY 1985. Voluntary information collections not associated with government benefits or contracts remained at 6 percent of the total as of the beginning of FY 1989. The burden associated with paperwork requirements to obtain or retain a benefit, such as Medicare payments, government contracts, and program research grants, represent 23 percent of the Federal total, marking an insignificant decline from 24 percent in the previous fiscal year. Overall, the proportional representation of these information collection types in the Federal total remained essentially the same over the past fiscal year.

## Most Burdensome Paperwork

As in the past, a few information collections that affect many U.S. citizens (e.g., tax requirements) or that are particularly burdensome per respondent (e.g., procurement requirements) constitute the majority of the paperwork burden imposed on the public: Over 50 percent of the total Federal paperwork burden can be attributed to just 20 information collections, and 44 percent can be attributed to just 10 information collections. (See Table 2.) Specific tax reporting requirements continue to be most conspicuous on this list. For example, the IRS Form 1040 and related schedules impose an annual burden in excess of 297 million hours (or 16.9 percent of total Federal paperwork burdens).

Figure 4
PERCENT OF REPORTING BURDEN
BY TYPE OF RESPONSE
(as of October 1, 1988)



## Table 2

## Twenty Most Burdensome Paperwork Requirements in the Federal Government

(in descending order)

| Title | Sponsor Department/ Agency | Respondent Burden in Millions of Hours | Percent of Total Burden | Cumulative Burden as Percent of Total |
|---|---|---|---|---|
| 1. Individual Income Tax Return and Related Schedules (1040) | Treasury | 297.0 | 16.9% | 16.9% |
| 2. Acquisition Management Systems and Data Requirements | Defense | 158.6 | 9.0% | 25.9% |
| 3. Information Collection in Support of DoD Acquisition | Defense | 88.4 | 5.0% | 30.9% |
| 4. Hazard Communication Standard | Labor | 54.2 | 3.1% | 34.0% |
| 5. Travel, Entertainment and Gift Expenses | Treasury | 50.4 | 2.9% | 36.9% |
| 6. Additional Records Under Federal Insurance Contribution Act | Treasury | 30.3 | 1.7% | 38.6% |
| 7. U.S. Corporate Income Tax Return | Treasury | 29.5 | 1.7% | 40.3% |
| 8. Nutrition School Lunch Program Reporting | Agriculture | 22.5 | 1.3% | 41.6% |
| 9. U.S. Individual Income Tax Return (1040A) | Treasury | 21.7 | 1.2% | 42.8% |
| 10. Guaranteed Student Loan Program | Education | 21.1 | 1.2% | 44.0% |
| 11. Regulation Z: Truth in Lending | FTC | 19.0 | 1.1% | 45.1% |
| 12. Statement of Interest Income | Treasury | 18.9 | 1.1% | 46.2% |

| | | | | |
|---|---|---|---|---|
| 13. Office of Federal Contract Compliance Program Recordkeeping and Reporting Requirements | Labor | 18.2 | 1.0% | 47.2% |
| 14. U.S. Partnership Income Tax Return | Treasury | 17.9 | 1.0% | 48.2% |
| 15. Passive Activity Loss Limitations | Treasury | 17.8 | 1.0% | 49.2% |
| 16. Employer's Quarterly Tax Return | Treasury | 17.6 | 1.0% | 50.2% |
| 17. Model Food Stamp Forms | Agriculture | 17.2 | 1.0% | 51.2% |
| 18. Employment Eligibility Verification | Justice | 16.5 | 0.9% | 52.1% |
| 19. Form 10-K: Annual Report under the 1934 Securities Act | SEC | 16.1 | 0.9% | 53.0% |
| 20. Textile Act Requirements | FTC | 15.5 | 0.9% | 53.9% |

The list of the 20 most burdensome information collections contains several collections not on last year's list and one notable deletion from that list. The largest collection to make its first appearance among the Federal government's 20 most burdensome is the Department of Labor's Hazard Communication Standard, which imposes 54 million hours of burden and is the fourth largest information collection imposed on the public by the Federal government. Other additions to this year's list are the Federal Trade Commission's Truth in Lending (Regulation Z) requirement (19 million hours), the Securities and Exchange Commission's Form 10-K (16.1 million hours), and the Federal Trade Commission's Textile Act requirements (15.5 million hours). One important deletion from this list is the W-2/W-3 information collection burden, which is administered by the Departments of Health and Human Services and the Treasury. This burden has now been included under the "government-wide" form category and has been deleted from this list, since this listing excludes the burdens associated with "government-wide" forms and "standard forms." If it had been included in Table 2, it would be listed as the third most burdensome information collection with a burden of 89.5 million hours. In addition, one other "government-wide" form omission from this list requires mention. The Medicare Common Claims form, which is administered by the Department of Health and Human Services and was categorized in FY 1987 as a "government-wide" form, has a burden of 58.6 million hours and would be the fourth most burdensome Federal requirement if it were included in the listing.

## Paperwork Reduction Goals in FY 1989

For each agency included in the ICB, Table 3 lists its FY 1988 base, the expected reduction from that base, the proposed new collections, and the net change in respondent burden hours.[7] (The last three categories show the hour and percent change, respectively.) In FY 1989, the Federal government plans "reductions from the base" of 51.8 million hours, equaling a 2.9 percent decrease in those requirements. In addition, "new collections" of 38.5 million hours are expected to be implemented in FY 1989, partially offsetting the reductions from base and leading to a net reduction of 13.3 million hours.[8]

In FY 1989, as in FY 1988, the implementation of large, statutorily-mandated requirements, over which the executive branch has little control, will affect significantly the Federal government's paperwork reduction estimates. These major statutory requirements, all being implemented by the Environmental Protection Agency, are expected to add 28 million hours to existing requirements (or the EPA's "reductions from base" estimate in Table 3) and entirely new collections of 17.2 million hours (shown in the EPA's "new collections" estimate in Table 3).[9]

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[7] In reviewing Table 3, refer to the explanation in the preceding section of the categories of data presented in Table 1: The categories of data presented in both tables are essentially the same.

[8] In Table 3, the burden shown for the Census Bureau represents those large, infrequently-collected paperwork requirements such as the "Agricultural" and "Economic" censuses. In the past, these Census collections have been shown as program change increases during the year in which they occur and program change decreases in the year following the completion of the collections for the Department of Commerce. Since these collections often represent a large portion of the Department of Commerce's burden during the year in which they occur, it has been difficult to gauge the Department's expected progress in reducing its other paperwork requirements, and, hence, these large Census collections are presented separately.

[9] The statutes causing these increases in paperwork burden are: the Superfund Amendments and Reauthorization Act, Safe Drinking Water Act, and the Hazardous and Solid Waste Amendments.

TABLE 3. ALLOWANCES FOR FY 1989 (in thousands of respondent hours)

|  |  | REDUCTION FROM BASE |  | FY 1989 NEW COLLECTIONS |  | FY 1988-FY 1989 NET CHANGE |  |
|---|---|---|---|---|---|---|---|
|  | FY 1988 BASE | PROGRAM CHANGE | PERCENT CHANGE | PROGRAM CHANGE | PERCENT CHANGE | PROGRAM CHANGE | PERCENT CHANGE |
| GOVERNMENT TOTAL | 1,760,824 | (51,771) | (2.94)% | 38,499 | 2.19 % | (13,272) | (0.75) |
| DEPARTMENTS: |  |  |  |  |  |  |  |
| AGRICULTURE | 70,233 | (1,252) | (1.78) | 26 | 0.04 | (1,226) | (1.75) |
| COMMERCE | 4,518 | (805) | (17.82) | 323 | 7.15 | (482) | (10.67) |
| CENSUS | 5,101 | (2,806) | (55.01) | 1,591 | 31.19 | (1,215) | (23.82) |
| DEFENSE | 263,169 | (13,227) | (5.03) | 37 | 0.01 | (13,190) | (5.01) |
| EDUCATION | 36,840 | (452) | (1.23) | 452 | 1.23 | 0 | 0.00 |
| ENERGY | 9,121 | (365) | (4.00) | 7 | 0.08 | (358) | (3.93) |
| HHS | 69,208 | (1,701) | (2.46) | 1,192 | 1.72 | (509) | (0.74) |
| HUD | 17,260 | (1,593) | (9.23) | 40 | 0.23 | (1,553) | (9.00) |
| INTERIOR | 6,418 | (11) | (0.17) | 6 | 0.09 | (5) | (0.08) |
| JUSTICE | 21,819 | 465 | 2.13 | 2,343 | 10.74 | 2,808 | 12.87 |
| LABOR | 129,165 | (29,370) | (22.74) | 1,389 | 1.08 | (27,981) | (21.66) |
| STATE | 1,865 | (29) | (1.55) | 0 | 0.00 | (29) | (1.55) |
| TRANSPORTATION | 87,858 | (8,135) | (9.26) | 9,422 | 10.72 | 1,287 | 1.46 |
| TREASURY | 764,358 | (8,892) | (1.16) | 1,174 | 0.15 | (7,718) | (1.01) |
| AGENCIES: |  |  |  |  |  |  |  |
| CFTC | 987 | 10 | 1.01 | 0 | 0.00 | 10 | 1.01 |
| CPSC | 319 | 1 | 0.31 | 3 | 0.94 | 4 | 1.25 |
| EPA | 69,174 | 22,423 | 32.42 | 19,300 | 27.90 | 41,723 | 60.32 |
| EEOC | 2,634 | (317) | (12.03) | 0 | 0.00 | (317) | (12.03) |
| FCC | 11,952 | (128) | (1.07) | 198 | 1.66 | 70 | 0.59 |
| FDIC | 4,223 | (30) | (0.71) | 10 | 0.24 | (20) | (0.47) |
| FEMA | 725 | (47) | (6.48) | 7 | 0.97 | (40) | (5.52) |
| FERC | 3,734 | (314) | (8.41) | 25 | 0.67 | (289) | (7.74) |
| FHLBB | 1,957 | 0 | 0.00 | 38 | 1.94 | 38 | 1.94 |
| FMC | 403 | (2) | (0.50) | 4 | 0.99 | 2 | 0.50 |
| FRB | 7,147 | (966) | (13.52) | 49 | 0.69 | (917) | (12.83) |
| FTC | 65,564 | (1,000) | (1.53) | 5 | 0.01 | (995) | (1.52) |
| GSA | 404 | (2) | (0.50) | 150 | 37.13 | 148 | 36.63 |
| ICC | 699 | (103) | (14.74) | 16 | 2.29 | (87) | (12.45) |
| NASA | 12,807 | (677) | (5.29) | 2 | 0.02 | (675) | (5.27) |
| NCUA | 5,646 | (2) | (0.04) | 0 | 0.00 | (2) | (0.04) |
| NEA | 383 | (18) | (4.70) | 0 | 0.00 | (18) | (4.70) |
| NEH | 456 | (23) | (5.04) | 0 | 0.00 | (23) | (5.04) |
| NSF | 5,239 | (45) | (0.86) | 31 | 0.59 | (14) | (0.27) |
| NRC | 5,534 | (66) | (1.19) | 250 | 4.52 | 184 | 3.32 |
| OPM | 1,603 | (9) | (0.56) | 250 | 15.60 | 241 | 15.03 |
| SEC | 63,306 | (1,925) | (3.04) | 10 | 0.02 | (1,915) | (3.02) |
| SBA | 2,422 | (320) | (13.21) | 111 | 4.58 | (209) | (8.63) |
| VA | 6,573 | (38) | (0.58) | 38 | 0.58 | 0 | 0.00 |

Hence, in the absence of these major statutory requirements, the Federal government would expect an increase in its "reductions from base" estimate for FY 1989 of 28 million hours (equaling "reductions from the base" of approximately 80 million hours and falling just half of 1 percent, or 8 million hours, short of the statutory reduction goal of 88 million hours). Additionally, excluding the 17.2 million hours of statutorily-mandated new collections from the "new collections" estimate shown in Table 3 would decrease that estimate to 21.3 million hours.

To indicate the impact of statutorily-mandated and court-ordered requirements on the executive branch's ability to reduce the "base" during FY 1989, we include Table 4 below. This table presents an estimate of the expected FY 1989 base (i.e., the total burden that will be imposed on the public at the end of FY 1989). This table is based directly on the data presented in Table 3 and the above discussion of court-ordered and statutorily-mandated requirements to be implemented in FY 1989. Table 4 first indicates the FY 1988 base; then the FY 1989 "Reduction to Base" and "New Collections" estimates are added to the FY 1988 base to derive the "Estimated FY 1989 Base." Table 4 shows that the estimated FY 1989 base is 13 million hours (or 0.8 percent) less than the FY 1988 base. (Note that this 13 million hour reduction estimate is the same as the "net reduction" estimate shown in Table 3.) Finally, the 45 million hours of statutorily-mandated requirements, over which the executive branch has little control, are subtracted from the estimated FY 1989 base to provide an indication of the total paperwork burden that would be imposed at the end of FY 1989 in the absence of these requirements. This datum, the "Expected FY 1989 Base Excluding Major Statutory and Court-Ordered Requirements," indicates that the FY 1988 base would have been decreased by 58.5 million hours (or 3.3 percent) in FY 1989 in the absence of the statutorily-mandated requirements, and hence the expected paperwork burden as of the end of FY 1989 would have been 1702.3 million hours.

## Table 4

### The Estimated FY 1989 Base (in millions of hours)

| | Changes in FY 1989 to the FY 1988 Base | Percent Change |
|---|---|---|
| FY 1988 Base | 1760.8 | ---- |
| Reduction From Base | -51.8 | -2.9 |
| New Collections | +38.5 | +2.2 |
| Estimated FY 1989 Base | 1747.5 | -0.7 |
| Major Statutory and Court-Ordered Requirements in FY 1989 | -45.2 | -2.6 |
| Expected FY 1989 Base Excluding Major Statutory and Court-Ordered Requirements | 1702.3 | -3.3 |

## Major Paperwork Reductions for FY 1989

Most major paperwork reductions anticipated for FY 1989 will be achieved through changes in the recordkeeping and reporting requirements in statutes and regulations. Many of these reductions will be accomplished as a consequence of initiatives proposed during earlier iterations of the ICB process and announced in prior editions of the ICB report and the Regulatory Program of the United States Government as significant paperwork and regulatory initiatives. Some of the most significant paperwork reductions anticipated during FY 1989 include:

### Department of Defense

The Department of Defense projects a net reduction in its data needs under the Acquisition Management System and Data Requirements Control List (AMSDL) of approximately 15 million hours. As the result of the review and streamlining of the AMSDL data requirements, the Department anticipates a reduction of 26 million hours in this paperwork burden. However, this reduction will be partially offset by an 11 million hour increase in the AMSDL's burden resulting from the inclusion of requirements not previously accounted for in the current AMSDL burden estimate.

### Department of Health and Human Services

The Department of Health and Human Services will introduce legislation during FY 1989 to eliminate a monthly reporting requirement under the Aid to Families with Dependent Children program. Currently, States must report to the Federal government each month on recipient households' income, resources, family composition, and circumstances. The elimination of this monthly reporting requirement will lead to a 734,000 hour reduction in paperwork burden.

In addition, the Department's Food and Drug Administration (FDA) will initiate a revision in its recordkeeping requirements for electronic products. The FDA will reduce burden by exempting non-ionizing electronic products from the current requirement that information be maintained for five years to allow the tracing of specific products. This exemption will result in a 400,000 hour burden decrease.

## Department of Labor

The Department of Labor's Occupational Safety and Health Administration expects the burden associated with its Hazard Communication Standard to decrease by 19.4 million hours in FY 1989. This decrease will result from the completion by the Department of a compliance assistance package that should reduce the time needed by the public to prepare site-specific workplace programs. After this reduction, the annual compliance burden for the HCS will be approximately 35 million hours.

The Department's Mine Safety and Health Administration will complete a rulemaking during FY 1989 to reduce the requirements associated with ventilation systems in underground coal mines by approximately 5.7 million hours. This reduction will result from the replacement of unnecessary recordkeeping requirements with certification requirements that will decrease paperwork without diminishing safety.

## Environmental Protection Agency

The Environmental Protection Agency will experience a 650,000 hour reduction in burden for the Notification Requirement for Oil and Hazardous Substances Spills. This reduction will result from the completion of the one-time reporting requirements contained in sections 302 through 304 of the Superfund Amendments and Reauthorization Act.

## Equal Employment Opportunity Commission

The paperwork burden imposed by the Equal Employment Opportunity Commission will decrease in FY 1989 as the result of the completion of a biennial survey, the Elementary-Secondary Staff Information Report. This survey, which resulted in a significant increase in the Commission's paperwork burden in FY 1988, will lessen the Commission's paperwork requirements in FY 1989 by approximately 310,000 hours.

## Major Paperwork Increases for FY 1989

Increases in information collection requirements by agencies in FY 1989 will only be permitted when agencies can demonstrate clearly that the increased paperwork requirements, to existing collections or through new collections, possess practical utility (i.e., necessity and usefulness) and that the format, scope, and timing of the collections represent the least burdensome approach, or that the increase in paperwork requires the minimal amount of information needed to carry out statutory requirements. A number of major new collections will be undertaken in FY 1989. For example:

### Department of Education

The Department of Education will implement a new paperwork requirement in FY 1989 that will require colleges, universities, and vocational schools to provide an annual notification to students of the amount of Title IV assistance that each has received. This new paperwork requirement is mandated by Section 483(f) of the Higher Education Act, and will add a paperwork burden of 310,000 hours.

### Department of Health and Human Services

The Department of Health and Human Services' new collections estimate for FY 1989 will show a 500,000 hour increase resulting from the inclusion in its burden of a "bootleg" collection. This collection, the Request for Statement of Earnings-Test and Evaluation, had been approved by the Office of Management and Budget (OMB) for a limited field test and evaluation with a burden of 1,000 hours through January 1988. Subsequent to the limited approval of this information collection, the Department significantly expanded this collection's scope and has been imposing this expanded collection on the public since that time. At OMB's request, the Department has submitted a new clearance request to OMB that reflects fully the scope and corresponding burden of this information collection. Approval of the expanded information collection by OMB would result in a 500,000 hour increase in the Department's base in FY 1989.

## Department of Labor

Two rulemakings in FY 1989 will increase by approximately 2.6 million hours the paperwork burden imposed on the public by the Department of Labor. The Department's Occupational Safety and Health Administration will implement practices and procedures to prevent energy-related injuries and fatalities in the workplace ("Control of Hazardous Energy Sources"), resulting in a paperwork burden of 2 million hours. In addition, the Department will issue a regulation under the Employee Retirement Income Security Act to allow the making of certain loans by retirement plans to individuals who are participants in and beneficiaries of such plans. This regulation will add 600,000 hours of new paperwork burden.

## Environmental Protection Agency

Two major increases in paperwork burden that the Environmental Protection Agency expects to implement in FY 1989 result from the expanded coverage of statutory requirements under the Superfund Amendments and Reauthorization Act (SARA) and the Safe Drinking Water Act Amendments. Almost 1 million additional facilities will be brought under the chemical inventory requirements of Sections 311 and 312 of SARA, resulting from the Department of Labor's expansion of the Hazard Communication Standard to nonmanufacturing facilities. This will add 28 million hours of paperwork burden.

In FY 1989, the agency will also finalize several major rulemakings issued pursuant to requirements in the Safe Drinking Water Act Amendments. These rulemakings include the Surface Water Treatment and Coliform Regulations, the Lead and Copper Primary Drinking Water Regulations, and the State Primary Regulation. The new monitoring and reporting requirements contained in these rules will add 9 million hours of paperwork burden.

Office of Personnel Management

The Office of Personnel Management will conduct one major new information collection in FY 1989. This information collection, Certification of Eligibility to Receive the Federal Employees Health Benefits Program (FEHBP) Rebate, is made necessary by a requirement in the Medicare Catastrophic Coverage Act, which allows Federal annuitants to receive premium rebates for Medicare benefits duplicated by the FEHBP. This collection will impose a burden of 250,000 hours in FY 1989 and a burden of 40,000 hours in subsequent years.

## SECTION III: THE INFORMATION COLLECTION BUDGET BY AGENCY

This section presents detailed information on the paperwork reductions planned by each agency included in the ICB process. The following descriptions present each agency's paperwork budget "account" and identify the specific reductions planned by each agency in FY 1989 and the specific program areas that each agency will review for additional reductions in fiscal years 1989 and 1990.

## U.S. DEPARTMENT OF AGRICULTURE

| | |
|---|---|
| FY 1988 Adjusted Base | 70,233,231 |
| Reductions from Base | -1,252,378 |
| New Collections | +25,541 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department plans several paperwork increases and decreases in FY 1989. A burden decrease of 952,000 hours is projected in response to new rules implementing parts of the Omnibus Budget Reconciliation Act of 1986. The new rules will eliminate the requirement that State agencies in the Food Stamp Program use information obtained through the Income and Eligibility Verification System to verify the eligibility of all benefit recipients.

The Agricultural Stabilization and Conservation Service (ASCS) will increase the farm operating plan for payment limitation review by nearly 2,248,000 hours. The increase results from amendments to the Food Security Act of 1985. However, automation of county ASCS offices will reduce the burden of reporting farm/crop data by 600,000 hours.

The Farmers Home Administration (FmHA) will reduce burden by 800,000 hours in the Multiple Family Housing Program. Borrowers will no longer be required to maintain FmHA approved bookkeeping systems.

In response to increased demands for inspection services, the Food Safety and Inspection Service will introduce a new system known as the "Streamlined Inspection System," resulting in an additional 195,000 hours of burden.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department will review three program areas for obtaining additional burden reductions: the Food Stamp Program's Quality Control System, the Meat and Poultry Inspections Program, and the Grain Standards Act regulations.

## DEPARTMENT OF COMMERCE

Commerce Department (excluding Periodic Censuses)

| | |
|---|---|
| FY 1988 Adjusted Base | 4,517,547 |
| Reductions from Base | -805,219 |
| New Collections | +323,002 |

Census Bureau: Periodic Censuses

| | |
|---|---|
| FY 1988 Adjusted Base | 5,100,749 |
| Reductions from Base | -2,805,749 |
| New Collections | +1,591,120 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department will accomplish paperwork burden reduction through the following measures: (1) the Bureau of Economic Analysis will not conduct the Benchmark Survey of Foreign Direct Investment in the United States in FY 1989 and will, through previously-raised exemption levels, reduce burden in the Industry Classification Questionnaire; (2) the Patent and Trademark Office will reduce burden in the Patent Processing procedure through the revision and simplification of several forms; and (3) the Census Bureau will reduce burden by continuing to promote the use of automated reporting from exporters in the Shipper's Export Declaration reporting process and by phasing out the Economic Censuses and the Census of Agriculture.

Major increases proposed by the Department for FY 1989 include: (1) the Bureau of Economic Analysis will conduct a new survey of Selected Services Transactions with Unaffiliated Foreign Persons; (2) the Patent and Trademark Office has new rules for disclosing information relating to requested patents; and (3) the Census Bureau will conduct a series of pretests and other surveys relating to the 1990 Census of Population and Housing.

## Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department will review several program areas for future reductions. The Bureau of Economic Analysis will study the possibility of increasing the exemption level to reduce the burden of the Annual Survey of Foreign Direct Investment in the United States. The Census Bureau will review follow-on surveys to the 1990 Decennial Census to determine if they can be reduced in size or eliminated entirely; it will also review the Current Population Survey and the Survey of Income and Program participation to eliminate unwarranted duplication. The Minority Business Development Administration will review the Business Development Report. Finally, the Bureau of Export Administration will review the Omnibus Trade and Competitiveness Act to determine the paperwork impact on the Export Administration Act and other statutes relevant to the Department.

## DEPARTMENT OF DEFENSE

| | |
|---|---|
| FY 1988 Adjusted Base | 263,168,863 |
| Reductions from Base | -13,226,718 |
| New Collections | 37,113 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

For FY 1988, the most significant reduction in the Department's paperwork burden will be in the area of technical data obtained under contract. It is anticipated that a net program change of over 15 million hours will occur in the time required to prepare technical manuals, drawings, and related deliverables in response to procurement actions. This reduction is based on the continuing review and streamlining of deliverables to remove unnecessary requirements. The overall burden for technical deliverables is a direct result of the President's program to obtain additional weapon systems in support of national security.

Information collections required to comply with legislation regarding the defense acquisition process will add over 2 million hours to the Department's paperwork burden during FY 1989. The added information is necessary to support the competitive weapon system acquisition process.

In other areas, the burden associated with the Application for Enlistment for the Armed Forces of the United States will be reduced by one-fourth, a reduction of over 88,000 hours. Several data collections will be deleted in FY 1989. These deletions will include: the Message Analysis Survey of Army Advertisements, the survey on Residual Effects of Military Experience on Low Aptitude Youth, the Armed Forces Vocational Aptitude Battery Counselor and Student Questionnaire, Services/Supplies Provided Civilian Hospitals, and the CHAMPUS Choice Screener Card.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department continues to conduct reviews of procurement paperwork, which comprises nearly 98 percent of its paperwork burden. Each year, the Department reviews approximately 50 percent of the Defense Acquisition Regulations and supplements. In FY 1989, the results of public comment obtained through a Federal Register solicitation will be reviewed to reduce the paperwork associated with contract deliverables, such as technical manuals and documentation. In addition, automation will be further explored as a means of reducing the public data collection burden.

## DEPARTMENT OF EDUCATION

| | |
|---|---|
| FY 1988 Adjusted Base | 36,840,000 |
| Reductions from Base | -452,000 |
| New Collections | +452,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department expects the paperwork burden associated with several of its information collections to increase in FY 1989. The most significant increase will result from the implementation of a new statutory requirement that students receiving Title IV assistance be notified at least once each year of the assistance they have received. This new requirement will add 310,000 hours of burden.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department will continue to review the Title IV Student Financial Assistance information collection activities, especially those associated with the Guaranteed Student Loan (GSL) program. Additionally, the Department has proposed legislation to amend sections 115(a) and 301(a) of the Carl D. Perkins Vocational Education Act to revise the application requirements for agencies and organizations seeking financial assistance under that Act. The proposed changes would eliminate prescriptive application requirements, and -- if enacted by the Congress -- would reduce the paperwork burden by 1.5 million hours.

## DEPARTMENT OF ENERGY

| | |
|---|---|
| FY 1988 Adjusted Base | 9,121,035 |
| Reductions from Base | -365,000 |
| New Collections | +6,750 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department's existing information collections are divided into two general groups. The largest group consists of collections used to manage contracts and grants and to conduct procurement activities. The second group consists of the collections used principally by the Energy Information Administration (EIA) for energy information and statistical purposes.

In general, the Department's paperwork reduction efforts in the management and procurement areas represent a continuation of efforts begun in FY 1984. They are tied closely to the various Presidential and Departmental management improvement programs. The paperwork reduction efforts in FY 1989 will contribute significantly to this management improvement effort and should lessen paperwork burdens on respondents, particularly the government-owned, contractor-operated (GOCO) facilities and laboratories.

In addition, EIA will continue to review carefully all energy information collections by fuel programs. These reviews, along with public consultations during the review process, facilitate the streamlining of EIA's information needs. Reviews of the EIA's Coal, Electric Power, Nonresidential Buildings Energy Consumption, and Manufacturing Energy Consumption Surveys will focus on the development of more efficient data collections and the minimizing of respondent burden. The only new energy information collection that the Department anticipates will be Form EIA-867, Nonutility Electric Power Production Survey, which is designed to monitor the production of electric power by nonutilities.

## Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

Departmental management and procurement information collections will be reviewed in FY 1989 to achieve reductions where possible. Specific reviews will be conducted in the program areas imposing the largest paperwork burdens. The improvement of safety at the DOE test and research facilities and security throughout the Department are top management priorities. Changes in these major programs have the potential for increasing the paperwork burden on management and operations contractors. The Department will carefully monitor these program changes in order to minimize any new paperwork requirements.

The Department will continue to participate in the Federal Demonstration Project (FDP). The goal of the FDP is to eliminate unnecessary administrative burdens on research sponsored by the Department. As FDP enters a second phase, it will be expanded to include financial assistance recipients from throughout the United States, and will seek to streamline other aspects of the grant application and management process. In addition, the Department is internally circulating a proposed rule that will permit more of the Department's research grant programs to use the timesaving and paperwork reduction techniques developed during the FDP's first phase.

EIA will continue its review program for all EIA-sponsored information collections. The reviews focus on the possibilities for data consolidation or elimination and the potential for further burden reductions through the use of more efficient statistical methodologies and new information collection technologies. For example, EIA is currently using personal computer programs with built-in edits to collect data for two of its information collections, and has a pilot program to test the electronic transfer of data for some petroleum supply information collections. EIA plans to preprint static information for all coal forms and to allow respondents the optional use of automated survey input. EIA is also developing plans for the use of computer tapes, telephone, and other electronic media such as floppy disks for the submission of oil and gas reserves data.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

| | |
|---|---|
| FY 1988 Adjusted Base | 69,208,000 |
| Reductions from Base | -1,701,000 |
| New Collections | 1,192,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Department's Social Security Administration (SSA) expects to decrease the public reporting burden by over 700,000 hours through its new "enumeration at birth" process. Also, the Health Resources and Service Administration projects a reduction of 250,000 burden hours through revisions to the Uncompensated Services Assurance Reporting Requirements.

The Centers for Disease Control will increase its information collection requirements in FY 1989 as a result of support for the President's program to prevent and control AIDS. These increased information collection requirements will include surveys to determine the seroprevalence of HIV infection in the general population; to measure knowledge, attitudes, and behavior concerning AIDS; to measure laboratory testing performance; and to evaluate AIDS information and education programs.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department will review several areas to achieve reductions in paperwork burden. The SSA is in the process of implementing a modernized claims system, which should decrease the Title II program's information collections by at least 10 percent. The Health Care Financing Administration expects substantial burden reduction to result from its analyses of the Medicaid Management Information System requirements and the Long Term Care Regulations. The Food and Drug Administration is reviewing several paperwork burden reduction possibilities: Nutrition Labeling, Reporting and Recordkeeping Requirements for Low and Acidified Canned Food Processors and the Investigational New Drug Applications. Finally, the National Institutes of Health plan to review several requirements, including the Biomedical Research Support Grant Application, the Medical Library Resources Improvement Application and the Scientific and Technical Competency Form.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

| | |
|---|---|
| FY 1988 Adjusted Base | 17,259,854 |
| Reductions from Base | -1,593,000 |
| New Collections | +40,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Department will continue to reduce the burden associated with the certification and recertification of participants in housing assistance programs: The Department expects a decrease of 92,097 burden hours to result from the automation of several functions involved in the preparation and submission of tenant data. In addition, the Department is working with other Federal Agencies and the private sector to develop and implement a common mortgage credit application form. Agreement by all parties to use this new form will allow the Department to simplify its mortgage application process and eliminate as much as 752,387 hours of burden. These initiatives are consistent with the President's objective of closer cooperation between the Federal and private sectors, as well as the goal of reducing paperwork burden on the public. Finally, a revision in the regulatory requirements prescribing preferences in the provision of housing assistance to low-income families should reduce paperwork burdens by 545,974 hours.

Two regulatory actions by the Department will increase paperwork burdens: the implementation of the Single Person Occupancy Limitation Rule (adding 21,000 hours of burden) and implementation of the Restrictions on the Use of Assisted Housing by Aliens Rule (increasing paperwork burdens by 56,000 hours).

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department's Office of Housing will continue its major review of the single family mortgage insurance program. This review continues an initiative begun several years ago to develop common forms for use in the single-family mortgage industry. In 1987, the development of a common form, known as the Universal Residential Appraisal Report (URAR), permitted HUD to discontinue its own appraisal form for a considerable savings. Currently, the Department is working on developing a universal mortgage credit application form. This effort is moving into its final stage and is expected to be completed in April 1989. The final product of this initiative will be the development of a common mortgage credit analysis worksheet. Although a definite timetable has not been developed, work on the mortgage credit analysis worksheet is projected to begin in April 1989 and to be completed by July 1990.

## DEPARTMENT OF THE INTERIOR

| | |
|---|---|
| FY 1988 Adjusted Base | 6,417,641 |
| Reductions from Base | -10,881 |
| New Collections | +5,583 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department's Bureau of Indian Affairs will revise the forms associated with the financial assistance and social services program. Finalization of streamlined application forms will result in a reduction of at least 36,000 hours. In addition, the National Park Service will review its requirements for the approval of State and local government historic preservation programs, resulting in reductions of approximately 3,000 hours.

The Office of Surface Mining and the Minerals Management Service will increase their information collection burdens by approximately 20,000 hours. These increases are needed to strengthen program integrity.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Office of Surface Mining (OSMRE) has established a task force to review regulatory requirements for redundancies and to examine the possibility of reducing the burden placed on respondents by its ten most burdensome reporting requirements. The task force will examine the capacity of OSMRE to make sound permit approval decisions with less or different information than currently is required.

The Minerals Management Service (MMS) expects to reduce the burden associated with its Report of Sales and Royalty Remittance as a result of allowing automated responses. MMS will also continue to review its regulations on geological and geophysical data to identify possible reductions.

## DEPARTMENT OF JUSTICE

| | |
|---|---|
| FY 1988 Adjusted Base | 21,818,788 |
| Reductions from Base | +464,921 |
| New Collections | +2,343,059 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Immigration Reform and Control Act of 1986 and the Immigration and Nationality Act (INA), administered by the Department's Immigration and Naturalization Service (INS), will have a significant effect on paperwork burdens in FY 1989. The Visa Waiver Pilot Program (VWPP) which went into effect July 1, 1988 is one such requirement. This program will except nonvisitor immigrants from eight designated countries from the Nonimmigrant Visitor Visa requirements of the INA. However, the Consular Efficiency Bill, the Immigration Marriage Fraud Amendments, and the Special Agriculture Workers (SAW) Program will each contribute to an increase in burden in FY 1989, though the paperwork burdens associated with these programs may decrease in FY 1991.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Drug Enforcement Administration is currently considering the use of electronic order forms by registrants for the purchase or sale of Schedule I and II controlled substances to decrease paperwork burdens. The INS will continue to review its "adjudication program," removing any obsolete forms or unnecessary data requirements and consolidating forms where practical. Additionally, the INS's Asylum Program is currently being reviewed, and any unnecessary reporting requirements under that Program will be eliminated.

## DEPARTMENT OF LABOR

| | |
|---|---|
| FY 1988 Adjusted Base | 129,164,753 |
| Reductions from Base | -29,370,000 |
| New Collections | 1,389,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department's Occupational Safety and Health Administration (OSHA) will reduce its Hazard Communication Standard (HCS) by 19.4 million hours. This reduction will be achieved through a program to assist employers in complying with the HCS. The Mine Safety and Health Administration will reduce its burden by 5,975,959 hours by replacing recordkeeping with certification requirements, requiring less frequent reporting intervals, and eliminating recordkeeping requirements. These reductions will be partially offset by the Department's promulgation of several proposed new rules and the addition of "short term exposure limits" (STELS) to the two existing asbestos standards.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

Pursuant to the Pension Welfare Benefits Administration's (PWBA) request, the Employment Retirement Income Security Act (ERISA) Advisory Council has undertaken a comprehensive review of reporting and disclosure requirements under ERISA. Because ERISA specifically enumerates the content of certain disclosure documents, further reductions in burden must be accomplished through legislative enactment. The PWBA is conducting a review to determine what legislative proposals should be developed for reducing the ERISA's reporting and disclosure burdens on plan sponsors.

Other reviews are planned for the OSHA mechanical power press standard and the Office of Federal Contract Compliance Programs' (OFCCP) recordkeeping requirements. This latter review will focus on changes in OFCCP recordkeeping requirements -- such as changes in respondent coverage, thresholds of regulatory application, frequency of reporting, and policy changes.

## DEPARTMENT OF STATE

| | |
|---|---|
| FY 1988 Adjusted Base | 1,865,344 |
| Reductions from Base | -29,411 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The burden associated with the Department's application for export licenses will increase by approximately 50 percent, resulting from a new statutory requirement. This new statutory requirement under the Foreign Relations Authorization Act of 1987 deals with the granting of export licenses to past violators of the Arms Export Control Act.

The introduction of the 10-year passport in 1983 continues to cause a steady reduction in the burden hours associated with applications for passports and services.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department's Bureau of Consular Affairs has undertaken a review of the immigrant and nonimmigrant visa application program and related forms. This review is expected to result in the revision of six forms, which could decrease the reporting burden on the public by approximately 48,000 hours.

## DEPARTMENT OF TRANSPORTATION

| | |
|---|---|
| FY 1988 Adjusted Base | 87,857,578 |
| Reductions from Base | -8,135,000 |
| New Collections | +9,422,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Department is proposing a number of regulatory changes which will reduce existing paperwork burdens by approximately 9 percent. The proposed reductions are for programs such as Electronic Posting and Filing of Tariffs, National Bridge Inspection Standards, Automatic On-Board Recording Devices for the Driver's Record of Duty Status, and Waiving of Commercial Drivers License Requirements for Firefighters and Farmers.

However, recent legislative changes and regulatory proposals will offset these reductions in FY 1989. For example, the Federal Highway Administration is under a statutory requirement to establish a national knowledge and skills testing program for licensing commercial drivers, which will increase burdens by 2.1 million hours. In addition, the Research and Special Programs Administration plans a rulemaking concerning the awareness of and training for the handlers, shippers and drivers of hazardous materials. This rulemaking could involve an estimated 5 million hours of paperwork burden annually. The Department will also adopt mandatory drug testing for certain transportation workers to improve safety. With the increased emphasis on improving safety, it is unlikely that the Department will see a significant reduction in paperwork burden in the next few years.

### Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Department has made significant reductions in paperwork burdens in the past, and will continue to review its requirements for further reductions. The requirements to be reviewed in FY 1989 include: Boating Safety, Automated Documentation of Shipment and Discharge of

Seamen, Pipeline Safety, Hazardous Materials, Section 15 Reports, Automation of Flight Plans, Aviation Safety Analysis Systems, Hours of Service of Railroad Employees, Offshore Facility Financial Responsibility Certification Program, Ship Operating Assistance, Maritime Labor and Training, Cargo Preference, Motor Carrier Safety, and Time Records. If the Department determines that any of these requirements can be reduced or eliminated, it will institute rulemakings or proposed statutory changes as appropriate.

DEPARTMENT OF THE TREASURY

| | |
|---|---|
| FY 1988 Adjusted Base | 764,357,515 |
| Reductions from Base | -8,892,480 |
| New Collections | +1,174,094 |

## Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Department's Internal Revenue Service (IRS) has begun an effort to rewrite tax form instructions to improve readability and to make them easier to understand. This year, the instructions for over 30 forms will be substantially or completely rewritten, including Forms 1040 and schedules, 1040A, 1040EZ, 2119, 4562, 4868, 5329, 5500, 8282, and 8283. Next year, the IRS will continue its efforts in this area by identifying additional forms for readability improvements.

The IRS is continuing to expand the use of electronic filing of income tax returns. For FY 1989, taxpayers in 36 states will be able to file electronically through participating tax return preparers. It is estimated that more than 4 million returns will be filed electronically in 1989 (compared with almost 600,000 in 1988). The IRS will be working to quantify any burden reduction associated with the expansion of electronic filing. It should be pointed out, however, that taxpayers will still be required to accumulate all the information for filing their return.

## Specific Program Areas the Department will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Office of the Comptroller of the Currency (OCC) is considering the elimination of the Special Energy Call Report. This report, while still providing valuable information, may no longer be of critical importance to OCC's monitoring of bank involvement in the energy sector. OCC is evaluating the utility of the Special Energy Call Report and, if the report could be eliminated without serious harm to OCC's monitoring program, a burden reduction of 9,162 burden hours could be achieved in FY 1989.

## COMMODITY FUTURES TRADING COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 987,033 |
| Reductions from Base | +9,742 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Commission anticipates an increase of 10,304 hours in the burden associated with its information collection, "Regulations Pertaining to the Responsibilities of Contract Markets and Their Members." This burden increase will result from new rules in the area of exchanging futures for physicals (EFP).

The Commission also anticipates a reduction of 563 hours in the burden associated with its information collection, "Regulations and Forms Pertaining to the Financial Integrity of the Marketplace." This will result from the Commission's decision not to move forward with proposed rule 1.64.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

Consistent with the Commission's overall plan to review each of its information collections during the next three years to develop burden reduction possibilities, the Commission will review the following collections in FY 1989: (1) Regulations Permitting the Grant, Offer and Sale of Dealer Options, (2) Regulation of Domestic Exchange-Traded Options, (3) Compliance with Requirements for Designation as a Contract Market, (4) Practice by Former Members and Employees of the Commission, and (5) Gross Margining of Omnibus Accounts.

## CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 318,855 |
| Reductions from Base | +538 |
| New Collections | 2,807 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1988 and Their Relationship to the President's Programs

New surveys planned by the Commission for FY 1989 are associated with several of its compliance programs. These surveys will assess conformance with mandatory standards for fireworks, children's sleepwear, and small parts in children's toys. The Commission may also conduct surveys in FY 1989 regarding the use of certain consumer products that cause a large number of severe injuries or deaths.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Commission has been unable to identify additional reductions in the burden imposed by its standards and regulations. The Commission will, however, continue its efforts to identify unnecessary reporting or recordkeeping requirements imposed by existing standards or rules.

## ENVIRONMENTAL PROTECTION AGENCY

| | |
|---|---|
| FY 1988 Adjusted Base | 69,174,000 |
| Reductions from Base | +22,423,000 |
| New Collections | +19,300,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

During FY 1989, the Agency's Air, Pesticides and Toxics programs will remain stable, with some modest reductions in a few areas. Because of increased statutory responsibilities, the Agency will also increase paperwork burden in several areas. Most notably, under the Superfund Amendments Reauthorization Act (SARA), the expansion of the Occupational Safety and Health Administration's Hazard Communication Standard to nonmanufacturing facilities will add nearly 28 million hours of burden -- bringing nearly a million additional facilities under the reporting requirements of SARA Sections 311 and 312. There is also a significant increase under the Safe Drinking Water Act (SDWA): new monitoring and reporting requirements for public water systems will add nearly 9 million hours. Finally, first-year implementation of the recordkeeping requirements in the new Underground Storage Tank program will add more than 8.2 million hours.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

To reduce both the burden and cost of its information collections, Environmental Protection Agency is continuing efforts to move from paper forms to the electronic collection of information. As a major first step, the SARA Section 313 program has published standards and instructions for submitting these data electronically. The Agency will broaden this initiative during FY 1989, and will also continue work on developing electronic forms that use "expert systems" technology. The Agency is also approaching the problem of burden indirectly, by taking steps to enhance the utility of the information that it collects. Foremost among the agency's efforts is a quality assurance and control program for the SARA Section 313 database that will begin in FY 1989. The Agency will also continue its efforts to improve the accessibility of chemical databases and to reduce the likelihood of duplicative information collections.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 2,634,000 |
| Reductions from Base | -317,000 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Commission's paperwork burden will decrease by over 300,000 hours in FY 1989 as a biennial survey to obtain employment data from public and secondary school districts is completed.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

During FY 1989, the Commission plans to evaluate the reporting requirements and data utilization of the EEO-1, Employer Information Report survey. Alternate means of reporting, such as expanded use of computer generated reports and submission of data on magnetic tapes will be considered. It is expected that this evaluation will be completed by the end of FY 1989.

Recordkeeping and other requirements associated with the Uniform Guidelines on Employee Selection Procedures remain under review. If any of these requirements can be reduced or eliminated, the Commission will institute rulemakings or proposed statutory changes as appropriate.

## FEDERAL COMMUNICATIONS COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 11,952,000 |
| Reductions from Base | -128,000 |
| New Collections | +198,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Commission will revise its Application for Private Land Mobile and General Mobile Radio services (Form FCC 574) to simplify questions concerning antenna height and structure. This revision is expected to result in a 68,000 hour burden reduction. The Commission's Common Carrier Bureau has proposed a change in its regulation of rates of dominant communications common carriers. This change would replace the current rate-of-return regulatory model with one that uses rate caps, resulting in a 60,000 hour burden reduction. In addition, the Office of Engineering and Technology plans to eliminate the requirement that an Application for Equipment Authorization (Form FCC 731) be filed to add trade names to a grant of authorization or to report a change in the manufacturing source of equipment. This would produce a burden reduction of 26,000 hours.

The Commission will impose notification and disclosure requirements on television stations, program distributors, and cable television systems as part of a revision of its syndicated programming exclusivity and network non-duplication rules. A burden hour increase of 137,500 hours is projected. The Common Carrier Bureau is proposing to require the filing of Mobile Services Division applications on microfiche to save space and provide speedier service to the public. This would increase paperwork burdens by 52,000 hours.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Commission will continue previously announced program reviews to reduce the paperwork burden of its equipment authorization procedures. In FY 1989, the Commission will initiate or conclude rulemakings to relax authorization requirements for videocassette recorders, the receiver portion of CB transceivers, high power broadcast transmitters and phase monitors, point-to-point microwave transmitters, FM translators, and FM broadcast boosters. These rulemakings, which should reduce paperwork burdens, should be completed in FY 1990.

## FEDERAL DEPOSIT INSURANCE CORPORATION

| | |
|---|---|
| FY 1988 Adjusted Base | 4,223,110 |
| Reductions from Base | -30,041 |
| New Collections | +10,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Federal Deposit Insurance Corporation (FDIC) expects to reduce the burden associated with several of its information collections. These reductions include: 26,218 hours by revising its regulations to raise the "low-activity" recordkeeping exemption; 10,000 hours by amending the agency's fair housing regulations to delete home improvement, maintenance and repair loans from existing home-loan recordkeeping requirements; and 32,450 hours in burden to be eliminated for banks that have completed the initial preparation of procedures for monitoring compliance with the Bank Secrecy Act.

Burden increases in existing collections of 38,117 hours are expected in FY 1989. The most significant increase will be the addition of 36,349 reporting hours to the Consolidated Reports of Condition and Income (Call Report).

Efforts will be made to achieve additional reductions through coordination with the Board of Governors of the Federal Reserve System on regulations common to all of the bank regulatory agencies. The Truth in Lending Act ("Regulation Z") and the Electronic Funds Transfer Act ("Regulation E") will be reviewed for possible paperwork reductions; however, the agency will ensure that any revisions to these requirements would not diminish the necessary protections afforded the public under these regulations.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The FDIC will conduct specific reviews of the Call Report Program, and will try to obtain additional reductions in reporting burden by introducing more materiality tests for reporting certain existing schedules or items, by changing the reporting frequency for certain schedules or items, and by eliminating any items that have proven to be of low importance to users of Call Report data. A review will also be conducted of recordkeeping requirements for securities transactions performed by FDIC-supervised banks for their customers. Finally, the FDIC will coordinate action with the Board of Governors of the Federal Reserve Board in the review of regulations common to all the bank regulatory agencies.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

| | |
|---|---|
| FY 1988 Adjusted Base | 724,883 |
| Net Reductions from Base | -46,674 |
| New Collections | +6,880 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

During FY 1989, the Federal Emergency Management Agency anticipates a significant decrease in the Hazard Identification, Capability Assessment, and Multi-Year Development Plan (HICA/MYDP). This nationwide data base collects information on the hazards facing local governments; the ability of State and local governments to prepare for, plan, and deal with these hazards; and the resource requirements of State and local governments needed for improving capability. Since the initial submission of all data required for local jurisdictions has been accomplished, only updates of the data base are necessary, reducing paperwork burdens by 22,540 hours.

The National Flood Insurance Program (NFIP) will implement a Preferred Risk Program which will use a simplified application form. This application form will be simpler to rate than the regular NFIP application, and consequently will take only half the time required to complete a regular application. It is estimated that up to 30 percent of the new business applications received each year may be qualified to participate in the Preferred Risk Program.

New information collections proposed by the Agency will include onetime studies and evaluations to assist the Agency in monitoring public assistance projects and assessing the effectiveness of training materials.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

In order to maintain adequate financial control over Federal funds, the National Flood Insurance Program (NFIP) requires each Write-Your-Own (WYO) company to submit a monthly financial report. During FY 1989, the Agency will explore ways to reduce these reporting requirements, specifically focusing on the requirements for participating companies with small numbers of policies that have demonstrated successful compliance with the WYO arrangement.

The Office of Disaster Assistance Programs has been steadily developing a computer system which has automated many processes in disaster recovery operations. It is anticipated that the time involved in processing data for the Individual and Family Grant Program will be reduced as a result of further automation.

FEDERAL ENERGY REGULATORY COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 3,734,397 |
| Reductions from Base | -314,079 |
| New Collections | +25,000 |

## Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

As a result of the diminished need for individual abandonment, filings and certificates of necessity and public convenience associated with the era of natural gas shortages, the Commission issued a final rule which will allow automatic abandonment and blanket authorization in certain circumstances, resulting in a reduction of about 1,800 hours.

The Commission revised the purchased gas adjustment (PGA) to ensure that purchased gas costs are reflected and recovered on a timely basis. Included in this revision was the automation of filing of revised tariff sheets. The revised PGA rule should reduce burdens by 20,000 hours, resulting from the standardization and computerization of filing requirements.

The Commission has aggressively pursued the automation of data collections in order to increase the efficiency and effectiveness of the collection, processing, and review of this information. The Commission has issued a Notice of Proposed Rulemaking requesting comments on an automated data collection system that would revise and replace several gas pipeline filing requirements. As proposed, the automated system is projected to decrease the reporting burden imposed on the public.

## Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

In FY 1989, the Commission will conduct a comprehensive review of its recordkeeping and reporting requirements in the oil, natural gas, and electric areas. This review will update the Commission's recordkeeping and reporting regulations and eliminate those requirements that changes in the law render obsolete. This review will also continue to explore the possibilities for the automation of data collection and processing, in order to consolidate data filings and increase the efficiency and effectiveness of data collection, processing, and review.

## FEDERAL HOME LOAN BANK BOARD

| | |
|---|---|
| FY 1988 Adjusted Base | 1,956,979 |
| Reductions from Base | 0 |
| New Collections | +38,400 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Bank Board will continue to monitor its information collection requirements and, in particular, its financial data reporting system and general recordkeeping requirements, to reduce burden, where possible, on the thrift industry.

During FY 1989, the Bank Board will conduct a onetime survey of thrift investment in mortgage derivative instruments. The purpose of the survey is to identify existing and potential problems resulting from investments by thrift institutions in new capital market instruments. The survey results will be used in establishing national policy concerning thrift investment in these instruments and in the development of supervisory procedures.

An increase in paperwork burden may result from new regulations required under the Competitive Equality Banking Act (CEBA). These regulations are necessary because Congress has mandated that the Bank Board take the necessary measures to ensure the safety and soundness of the thrift industry and to protect the Federal Savings and Loan Insurance Corporation insurance fund.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Bank Board continues to review carefully its information collections to ensure that they impose the least possible burden, consistent with its regulatory responsibilities. A Thrift Industry Reports Committee is reviewing the Thrift Financial Report to determine the best approach for incorporating certain accounting procedures as required by the CEBA.

The Bank Board continues its expansion of computer-assisted techniques to reduce reporting costs, including the electronic submission of Thrift Financial Reports. Currently, 85 percent of the Thrift Financial Reports are transmitted electronically.

## FEDERAL MARITIME COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Based | 403,315 |
| Reductions from Base | -2,000 |
| New Collections | +4,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the only major change in paperwork burden will be an increase resulting from the implementation of a shipping industry study required by the Shipping Act of 1984. This burden will be reduced in FY 1990, when the study is completed.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Commission is reviewing its regulations and considering alternative methods of obtaining tariff data under 46 CFR 550 and 580. Its proposed automated tariff filing and information system should substantially decrease recordkeeping and reporting requirements after FY 1989.

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

| | |
|---|---|
| FY 1988 Adjusted Base | 7,146,900 |
| Reductions from Base | -966,166 |
| New Collections | +48,832 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Federal Reserve plans to achieve a further burden reduction of about 20,000 hours in the deposits reports used for administration of Regulation D (Reserve Requirements of Depository Institutions) and for construction and analysis of the monetary and reserves aggregates. The Federal Reserve has also recommended statutory changes to the Congress that, if enacted, would reduce the recordkeeping and disclosure requirements of Regulation Z, Truth in Lending, by about 88,500 hours. In addition, a preliminary assessment indicates that the recordkeeping and disclosure burden associated with Regulation E, Electronic Fund Transfers, could be reduced by about 128,000 hours, to the extent permitted by statutory change.

The Federal Reserve incurred a 941,000-hour increase in reporting burden in FY 1988 upon adoption of Regulation CC to implement the requirements of the Expedited Funds Availability Act. Of this, however, 784,000 hours were for initial, one time disclosure requirements that will be eliminated in FY 1989.

Several new information collections are anticipated for FY 1989, totalling about 48,800 hours. Most of this increase, 33,300 hours, is for onetime surveys or for the first-year burden associated with amendments to the Home Mortgage Disclosure Act report.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Federal Reserve will continue to reexamine periodically the need and burden of its paperwork requirements. About 30 of the Federal Reserve's 105 paperwork requirements are scheduled for review in FY 1989.

Also, the Federal Reserve is continuing its electronic data transmission initiatives. By June 1988, 71 state member banks were filing their Reports of Condition and Income electronically, and additional banks are expected to begin filing these Reports electronically in the future. The "Reductions from Base" figure shown above does not reflect the decreases in reporting burden that are expected to result from the increased use of electronic data transmission; such decreases will be incorporated as soon as more experience is gained. Nevertheless, the Federal Reserve believes that sizable reductions will be achieved.

## FEDERAL TRADE COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 65,564,000 |
| Reductions from Base | -1,000,000 |
| New Collections | +5,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

During FY 1989, the Commission will consider further amendments to its major statutory consumer disclosure requirements, the Textile, Wool, and Fur Labeling regulations. These amendments will seek to achieve the statutory goals at a reduced paperwork burden. The Commission will also conclude deliberations on amendments that would reduce the burden of the Games of Chance Rule (3084-0067) by one-third. Rulemaking proceedings to determine whether the Funeral Industry Practices Rule should be amended or terminated will be in progress during FY 1989. Consideration of amendments to the Premerger Notification Rules (3084-0005) that would exempt or otherwise provide special treatment for the acquisition of small percentages of an issuer's voting securities will be completed in FY 1989. The Commission will continue to look for ways to reduce the burden of this report within the statutory objectives of the program.

The allowance for new information collections in FY 1989 will support law enforcement monitoring activities subject to the Paperwork Reduction Act. The Commission's economic and regulatory impact analysis activities may also require some very limited information collection.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

Existing consumer protection rules involving disclosure or recordkeeping requirements will be reviewed for possible burden reduction possibilities. The Commission will also continue to review major consumer disclosure rules for burden reduction possibilities.

## GENERAL SERVICES ADMINISTRATION

| | |
|---|---|
| FY 1988 Adjusted Base | 404,000 |
| Reductions from Base | -2,000 |
| New Collections | +150,000 |

### Specific Reductions and Increases in Paperwork Anticipated for FY 1989 and Their Relationship to the President's Programs

During FY 1989, the Agency's Federal Supply Service plans to change the frequency of reporting for the Status Report of Orders and Shipments from semimonthly to monthly, resulting in a decrease of 1,944 burden hours. In addition, the Agency will be reviewing all of its information collections in an effort to achieve further cuts.

A new information collection proposed by the Office of Acquisition Policy will require contractors to provide information indicating that the materials conform to contract provisions when supplies are shipped. This information collection will add 150,000 hours of paperwork burden.

The agency's Administrator continues to support the President's paperwork reduction initiatives and will ensure that unnecessary paperwork requirements are not imposed on the public.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The following information collections will be reviewed in FY 1989: Description of Property for Possible Leasing, Lessor's Annual Cost Statement, and Proposal to Lease Space.

## INTERSTATE COMMERCE COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 699,129 |
| Reductions from the Base | -103,234 |
| New Collections | +16,015 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and their Relationship to the President's Programs

The Commission has reconsidered the requests of petitioners that caused a "stay" of the March 31, 1987 decision to eliminate the Uniform System of Accounts (USOA) and revise the quarterly and annual reporting requirements for Class I and II common and contract carriers of property. The Commission has decided to continue the USOA because disclosures will be more reliable and uniform. The Commission also decided to reduce the annual and quarterly reports and make schedule 500 of the annual report form M an optional reporting requirement. However, carriers must complete schedule 400 (and schedule 400 HG, when applicable) if schedule 500 is not completed. Although these decisions will not reduce the reporting burden as much as had previously been anticipated, the reductions outlined above accord with the President's policy on paperwork reduction.

### Specific Program Areas the Agency will Review To Reduce Unnecessary Recordkeeping and Reporting Requirements

During FY 1989, the Commission will review all reporting requirements for possible reductions.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

| | |
|---|---|
| FY 1988 Adjusted Base | 12,807,000 |
| Reductions from Base | -677,000 |
| New Collections | +2,100 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

During FY 1989, the National Aeronautics and Space Administration anticipates a major reduction in its procurement paperwork burden. This reduction will be achieved through the continued use of consolidated contracts. The use of such contracts will result in the reduction of solicitation and contract reporting burden on the private sector (including technical and other data submitted by prime contractors), and should decrease paperwork burdens by 677,000 hours.

Three new information collection requirements are anticipated for FY 1989. However, the burden that will result from these new requirements will be minimal, and will most likely be offset by other reductions expected in FY 1989. It is currently anticipated that there will be no increased information collection requirements imposed on the public for FY 1990 and FY 1991.

## NATIONAL CREDIT UNION ADMINISTRATION

| | |
|---|---|
| FY 1988 Adjusted Base | 5,645,591 |
| Reductions from Base | -1,776 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Agency will reduce the information collection burden associated with a data sampling program by 1,700 hours. The Agency does not anticipate an increase in its information collection burdens.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Agency has an ongoing policy of periodically reviewing its regulations. Information collections associated with these regulations are reviewed for need and potential burden reduction.

## NATIONAL ENDOWMENT OF THE ARTS

| | |
|---|---|
| FY 1988 Adjusted Base | 383,385 |
| Reductions from Base | -17,800 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Endowment will review the Challenge II program to determine whether the program can be discontinued  Elimination of the program would result in a decrease of 15,000 burden hours.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Endowment will continue its practice of guideline review by advisory panels and program officials in an effort to eliminate the collection of unnecessary or duplicative information.

## NATIONAL ENDOWMENT FOR THE HUMANITIES

| | |
|---|---|
| FY 1988 Adjusted Base | 455,743 |
| Reduction from Base | -23,263 |
| New Collections | 0 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

In FY 1989, the Endowment will achieve a reduction in reporting burden by discontinuing use of the Financial Status Report for Individuals; streamlining the Payment Request Form for Individuals; setting a limit on the length of the narrative in applications to the Media, Museums, Libraries and Public Humanities Projects in the Division of General Programs, the Challenge Grant Program, and the Tools, Editions, Humanities, Science and Technology categories in the Research Division; and substituting a form that can be used in place of a narrative response in the State Programs Guidelines for Biennial Proposals and their Plan for Compliance. The Endowment will also experiment with ways of reducing the applicant and grantee reporting burden related to budgeting for and maintaining auditable records of cost sharing.

The Endowment is committed to continuing the review of its collections in an attempt to achieve up to a 5 percent reduction in paperwork burden in FY 1989.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Endowment will carefully review and simplify the recordkeeping requirements for the Challenge Grant Administrative Requirements. The standard budget form which is used by most programs will also be carefully reviewed. In addition, the program income reporting requirements for most Research, Education, and Museum Programs grants will be reduced from mandatory reporting of once per year during the grant (and for up to five years after the end of the grant period) to reporting only when income has been earned.

## NATIONAL SCIENCE FOUNDATION

| | |
|---|---|
| FY 1988 Adjusted Base | 5,239,380 |
| Reductions from Base | -45,000 |
| New Collections | +31,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

The Foundation has submitted a request to Congress, under the President's Competitiveness Bill, to amend Section 15(c) of the National Science Foundation Act of 1950. This revision would delete certain reporting requirements by scholarship or fellowship applicants under the Security Provisions of the Act. The proposed amendment is expected to reduce reporting requirements by approximately 12,000 burden hours annually.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

In FY 1989, the Foundation will conduct an Information Resources Management review of the Division of Science Resources Studies. Other than the burden associated with the submission and review of proposals, this Division is responsible for the majority of information collected by the agency. This review will identify potential reductions in paperwork burden.

## U.S. NUCLEAR REGULATORY COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 5,534,259 |
| Reductions From Base | -66,000 |
| New Collections | +250,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated in FY 1989 and Their Relationship to the President's Programs

During FY 1989, the Commission will discontinue NRC Form 1, "Personnel Security Questionnaire," (2,004 hours) and replace it with the required Standard Form 86, "Questionnaire for Sensitive Positions;" the "Medical License Occupational ALARA Programs" (800 hours); the Survey of Users of Devices Under General License (280 hours); and the Survey of State and Tribal Response Capabilities (71 hours).

Incorporating the latest American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) requirements for the periodic testing of metal containments in Nuclear Power Plants will increase the burden for 10 CFR 50.55a by 12,400 hours. Also, the burden associated with the requirements contained in Generic Letters and Bulletins will increase by 206,100 hours, as a corrective action causes licensees to retain records and submit reports.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Commission is reviewing its most burdensome information collection requirements for possible burden reductions. Each collection will be evaluated to ensure that the required information is needed by the Commission, that the information being collected has practical utility, and that each requirement does not duplicate other information collection requirements. During the FY 1989 review, the Commission will evaluate ten regulations and two NRC forms -- encompassing 4 million hours of burden.

## OFFICE OF PERSONNEL MANAGEMENT

| | |
|---|---|
| FY 1988 Adjusted Base | 1,602,696 |
| Reduction from Base | -9,173 |
| New Collections | +250,367 |

### Specific Reductions and Increases in Paperwork Burden Anticipated in FY 1989 and Their Relationship to the President's Programs

The Agency has responsibility for administering the defined benefit segment of the Federal Employees Retirement Systems (FERS) Act of 1986. Although most information collections required by law and regulation for establishing the new system were cleared during FY 1987 and FY 1988, two new collections will be added during FY 1989: the Application to Make Service Credit Payment for Civilian Service and the Application for Deferred Annuity.

Also, on July 1, 1988, the President signed into law the Medicare Catastrophic Act of 1988, P.L. 100-360, which was effective January 1, 1989. This Act expands benefits provided under Medicare Parts A and B and increases the extent to which Medicare coverage duplicates coverage under the Federal Employees Health Benefits Program. Because of the overlap, Federal annuitants will be asked to complete the "Medicare Catastrophic Coverage Survey" to allow the agency to reduce premiums for individuals covered under both programs. This survey will add 250,000 burden hours in FY 1989 and a smaller burden thereafter.

### Specific Program Areas the Agency Will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The Agency will review all recordkeeping and information collections annually to identify any that may be modified or eliminated.

## SECURITIES AND EXCHANGE COMMISSION

| | |
|---|---|
| FY 1988 Adjusted Base | 63,306,356 |
| Reductions from Base | -1,925,161 |
| New Collections | +9,898 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and Their Relationship to the President's Programs

To address the Commission's concern about changes in international capital markets, it has proposed Regulation S to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. Proposed Regulation S would include safe harbors which rely significantly on the periodic reporting system of the Securities Exchange Act of 1934, and would reduce current paperwork burdens by 315,500 hours.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

As a part of its efforts to eliminate unnecessary burdens on small entities, the Commission will consider exempting small investment advisers, under certain conditions, from the Investment Advisors Act's registration requirements. This exemption would reduce substantially the number of advisers complying with recordkeeping and several other regulatory requirements issued pursuant to the Investment Advisers Act, leading to a possible reduction of 301,000 burden hours.

## SMALL BUSINESS ADMINISTRATION

| | |
|---|---|
| FY 1988 Adjusted Base | 2,422,470 |
| Reductions from Base | -319,957 |
| New Collections | +110,995 |

### Specific Reductions and Increases in Paperwork Burden Anticipated for FY 1989 and their Relationship to the President's Programs

The Agency's Office of Civil Rights Compliance will discontinue use of its "Compliance Review Report"; it has found the information to be duplicative of information obtained through other sources. The Office of Financial Assistance is considering the submission of annual financial statements from most borrowers -- rather than the current monthly and quarterly statements. These actions will result in decreased paperwork burdens and costs to the government.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

The agency will continue to review all information collections for possible burden reductions. This review will continue to focus on improving methods of collection and reducing the amount and frequency of information required from small businesses. A specific area targeted for future reduction is the Minority Small Business 8(A) program, which may be able to reduce three collections currently in use. Further reductions will also be targeted for the Offices of Business Development and the Financial Assistance.

## VETERANS ADMINISTRATION

| | |
|---|---|
| FY 1988 Adjusted Base | 6,572,573 |
| Reductions from Base | -38,090 |
| New Collections | +38,000 |

### Specific Reductions and Increases in Paperwork Burden Anticipated in FY 1989 and Their Relationship to the President's Programs

Completion of the Agency's National Vietnam Veterans Readjustment Study will provide a 16,535 hour reduction in paperwork burdens. New collections in FY 1989 will include comprehensive health care and medical research studies and evaluations. These studies will address female veterans, dental care, selected cancers, patient satisfaction, vocational rehabilitation, medical research, and the role of religious conviction in the healing process.

### Specific Program Areas the Agency will Review to Reduce Unnecessary Recordkeeping and Reporting Requirements

Major information collections will be reviewed periodically to identify unnecessary reporting and recordkeeping requirements. The Agency will continue to support changes in legislation that will reduce or eliminate the need for data collections.

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CRS Report for Congress

# Paperwork Management in the Federal Government

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Government Division

March 22, 1989

CRS

Congressional Research Service • The Library of Congress

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# PAPERWORK MANAGEMENT IN THE FEDERAL GOVERNMENT

## SUMMARY

The Federal Reports Act of 1942 articulated the first Federal policy for controlling Government paperwork and provided the statutory authority for regulating paperwork for nearly forty years. In the meantime, Federal paperwork continued to grow at an unprecedented rate, as new regulatory programs were created and the Federal tax code became increasingly more complex.

Realizing that the provisions of the 1942 Federal Reports Act were inadequate to control the proliferation of required Federal reports and forms, the 93rd Congress established the Commission on Federal Paperwork. In its 1977 report, the Commission reported that the Act contained structural and procedural flaws which precluded its ability to successfully control the paperwork burden:

- Shared jurisdiction between GAO and OMB over the reports clearance process;
- Exemption of the IRS and the bank supervisory agencies from the Act's provisions; and
- Insufficient resources to support the clearance process.

Congress responded with the enactment of the Paperwork Reduction Act in 1980 which more clearly defined the oversight responsibilities of the Office of Management and Budget (OMB) as they related to the reporting requirements of Federal agencies and eliminated all agency exemptions from OMB's paperwork reviews. OMB's Office of Information and Regulatory Affairs (OIRA) was reauthorized by the Paperwork Reduction Reauthorization Act in 1986 to develop and administer uniform information policies.

## PAPERWORK MANAGEMENT IN THE FEDERAL GOVERNMENT

In 1980, Congress enacted the Paperwork Reduction Act in response to growing concern over the ever increasing amount of Federal paperwork requirements being imposed on the public. Passage of the Act reflected a desire by Congress to more clearly define the oversight responsibilities of the Office of Management and Budget (OMB) as they related to the reporting requirements of Federal agencies. OMB's Office of Information and Regulatory Affairs (OIRA) was authorized by the Act to develop and administer uniform information policies in order to facilitate the availability and accuracy of agency data collection practices. [1]

OIRA's authorization expired in 1983, and was funded on an annual basis from OMB's general appropriations until the passage of the Paperwork Reduction Reauthorization Act in 1986. [2]

### HISTORY AND BACKGROUND

Early discussions of Federal records centered on the preservation and storage of the original documents. The concept of excessive paperwork as a public and private burden can be traced to the growth of the Federal Government and the rapid evolution of information technology which fundamentally changed the way in which information was collected, used, and disseminated.

Eighty years ago, President Theodore Roosevelt sought to simplify the Federal Government's statistical reporting and duplication by creating the Interdepartmental Statistical Committee [3]. While the panel issued no formal report, this was the first Presidential acknowledgment of the Federal Government's need to develop better uniformity and controls in recordkeeping. [4]

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[1] 44 U.S.C. 3501.

[2] U.S. Congress. House. *Making Continuing Appropriations for Fiscal Year 1987*. Conference Report to Accompany H.J. Res. 738. House Report 99-1005, 99th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1986. p. 771; and 100 Stat. 3341, Title VIII.

[3] U.S. President, 1901-1909 (Roosevelt). Executive Order 937, September 10, 1908.

[4] U.S. Congress. House. Committee on Post Office and Civil Service. *The Federal Paperwork Jungle*. House Report No. 52, 89th Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1965. p. 6.

U.S. involvement in World War I, and the increased technologies and demands for domestic production created greater recordkeeping and paperwork requirements for businesses as well as the public. In response to these concerns, Congress directed its attention to Federal records management with the passage of the Budget and Accounting Act in 1921.[5] This Act created the Bureau of the Budget, and in conjunction with legislation passed the following year, authorized internal agency controls on the quantity of Federal reports and documents.[6]

During the next decade, in July 1935, Congress formally authorized the Central Statistics Board to develop and coordinate the "elimination of duplication" within the Federal Government's statistical services.[7] Three years after the creation of the Board, President Franklin D. Roosevelt, in a letter to Board Chairman Stuart Rice, expressed concern about the increased volume of statistical reports which Federal agencies required from business and industry. At President Roosevelt's request, the Central Statistical Board prepared a report with recommendations which would be "consistent with efficiency and economy both to the Government and to private industry."[8] It has been stated that this was perhaps the first real recognition of reporting and paperwork burdens placed upon the public.[9]

The completed report, transmitted to President Roosevelt on December 31, 1938, stated that the Board had "made a comprehensive study of the financial and statistical reports made to 88 Federal agencies by private individuals, farms, business concerns, and other respondents during the fiscal year ending June 30, 1938."[10] The report concluded that, while the majority of the forms were necessary for the administration of Government functions, there was still a considerable duplication of reporting efforts among the various agencies. To discourage multiple collections of information, the Board recommended a centralization of responsibilities for the consolidation of Federal reporting and statistical activities. In conclusion, the Board's final report stressed that such changes should be "developed gradually" to ensure a continuity of existing reporting services. It further stressed that Congress should "adopt a definite policy" of oversight pertaining to duplicative reporting requirements, and at some future time, create a statistical coordinating agency. [11]

---

[5] 42 Stat. 20.

[6] 42 Stat. 20-27, and 541.

[7] 49 Stat. 498. Section 6 abolished the Central Statistical Board which had been created by Executive Order 6225, July 27, 1933. The legislative mandate of this new Board authorized a continuation of its predecessor's powers in statutory form.

[8] U.S. Congress. House. *Message from the President of the United States Transmitting the Report of the Central Statistical Board*. House Doc. No. 27, 76th Cong., 1st. Sess. January 10, 1939. Washington, U.S. Govt. Print. Off., 1939. p. IX.

[9] House Post Office and Civil Service Committee, *The Federal Paperwork Jungle*, p. 8.

[10] House, Report of the Central Statistical Board, p. 7. The final report, as transmitted by President Roosevelt to Congress on January 10, 1939, was printed as this House document.

In response to the Central Statistical Board's final recommendations and complaints by the small business community to the increased reporting requirements associated with the Second World War's price and production controls, the Senate appointed in 1940 a Special Committee to Study Problems of American Small Business. The Committee's final report included excerpts of letters written by more than one hundred businessmen which stressed the increased demands by the Federal Government for statistical data. [12] The Special Committee found that, in its consideration of "voluminous" correspondence and data, there was ample evidence that President Roosevelt and the "heads of the various Federal agencies almost unanimously" advocated the creation of a central agency to coordinate Federal statistical reporting services while not "usurping" the agencies' statutory authority to collect statistical data. [13]

## THE FEDERAL REPORTS ACT

As a result of its findings, the Special Committee included in its final report the draft language of a proposed Federal Reports Act to coordinate Federal reporting services and to minimize the burdens of providing reports and information to Federal agencies. [14] The bill, S. 1666, was referred to the Senate Committee on Education and Labor, and was reported favorably on October 20, 1942. Its recommendation for enactment of the Federal Reports

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[11] Ibid., p. 36-37.

[12] U.S. Congress. Senate. Special Committee to Study Problems of American Small Business. *Small Business Problems*. Senate Report No. 479, 77th Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1941. p. 1-2.

[13] Ibid., p. 2.

[14] Ibid., p. 3-4.

Act was based on the Special Committee's findings, as well as the final report of the Central Statistical Board. [15]

The escalation of U.S. involvement in World War II and the subsequent creation of the War Production Board and the Office of Price Administration presented additional pressing concerns. The Senate Committee on Education and Labor reported that these new wartime agencies required additional reporting and statistical information from businesses. Taking into consideration the application of the proposed Federal Reports Act to "the present wartime conditions," the Committee recommended that the "purposes of the bill were good and it should be enacted by the Congress." [16]

Even though several amendments were subsequently made by the House in its consideration of the bill, the key issue concerned whether the Department of Treasury and the Internal Revenue Service (IRS) should be excluded from the reporting requirements of the Act. Floor debate on the House version included a discussion by at least one Member, Representative Clare Hoffman, who opposed such an exemption because of the need to eliminate unnecessary reports. The previewing view, however, favored a Treasury Department exemption to maintain confidentiality of tax returns. [17]

On the Senate side, the Committee on Education and Labor had feared that confidentiality would be impossible to maintain with paperwork and records pertaining to the collection of income taxes. The Senate Committee also concluded that the business community had few complaints concerning reporting burdens associated with the preparation of income taxes. [18] In the final version of S. 1666, House and Senate conferees decided that the IRS, the Comptroller of the Currency, the Bureau of the Public Debt, the Bureau of Accounts, and Division of Foreign Funds Control, and the Federal bank supervisory agencies would be exempted. [19]

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[15] U.S. Congress. Senate. Committee on Education and Labor. *Federal Reports Act of 1942*. Senate Report No. 1651, 77th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1942. p. 3.

[16] Ibid., p. 4.

[17] Whittington, Will. Coordination of Federal Reporting Services. Remarks in the House, *Congressional Record*, v. 88, November 27, 1942. p. 9158-9160.

[18] Senate Committee on Education and Labor, Federal Reports Act of 1942, p. 4-5.

[19] U.S. Congress. House. *Federal Reports Act of 1942*. House Report No. 2722, 77th Cong., 2d Sess., 1942. Washington, U.S. Govt. Print. Off., 1942. p. 6.

The Federal Reports Act articulated the first Federal policy for controlling Government paperwork and provided the statutory authority for regulating paperwork for nearly forty years. To achieve these goals, the Director of the Bureau of the Budget (later OMB) was authorized "to coordinate Federal reporting services, to eliminate duplication and reduce the cost of such services, and to minimize the burdens of furnishing information to Federal agencies. [20]

The conclusion by the Senate Committee on Labor and Education in 1942 that there were was no need to regulate tax reporting would prove to be a significant limitation since OMB's mandate to better regulate the paperwork burden was ultimately limited by the Act's exemptions for tax and financial reporting. A 1965 House report, "*The Federal Paperwork Jungle*," stated that the IRS and Social Security Administration were responsible for over 70 percent of all federally mandated reports. [21]

In 1968, the Senate Select Committee on Small Business, which evolved from the earlier Senate Special Committee that drafted the original Federal Reports Act, issued a report on the growing problems of small businesses in meeting Federal paperwork requirements for Federal tax returns, census reports, and wage and earnings reports. [22]

Five years later, in 1973, the Committee bluntly stated that the IRS was "the single largest contributor to the Federal Paperwork Burden." [23] It recommended that Congress should consider bringing the IRS under the authority of the Federal Reports Act. The Committee also faulted OMB for "ineffective administration of the Act" and demonstrating "little initiative in reducing Federal reporting requirements" for small businesses. Based on these findings, the Committee suggested that responsibility for administration of the Act should be transferred to the General Accounting Office's Comptroller General. [24]

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[20] 56 Stat. 1078; and 44 U.S.C. 3501.

[21] House Committee on Post Office and Civil Service, *Federal Paperwork Jungle*, p. 23.

[22] U.S. Congress. Senate. Select Committee on Small Business. *Interim Report on Government Reports and Statistics*. Senate Report No. 1616, 90th Cong., 2nd Sess. Washington, U.S. Govt. Print. Off., 1968. p. 1.

[23] U.S. Congress. Senate. Select Committee on Small Business. *The Federal Paperwork Burden*. Senate Report No. 93-125, 93rd Cong., 1st. Sess. Washington, U.S. Govt. Print. Off., 1973. p. 19.

[24] Ibid., p. 62-63.

The Federal Reports Act was further limited by legislation which exempted selected categories of forms and reports from OMB's jurisdiction. In 1973, the Congress amended the Federal Reports Act exempting the independent regulatory commissions from OMB's oversight. GAO's Comptroller General was required to provide certain clearance functions pertaining to requests for information to assure that the data was obtained with a minimum burden upon small businesses. [25]

## COMMISSION ON FEDERAL PAPERWORK

Realizing that the provisions of the 1942 Federal Reports Act were inadequate to control the proliferation of required Federal reports and forms, the 93rd Congress established the Commission on Federal Paperwork with a broad mandate to recommend changes in existing Federal reporting regulations and procedures. [26]

The Commission completed its work in September 1977, with the issuance of 770 recommendations and the publication of 36 separate reports. [27] Among its numerous findings, the Commission reported "structural and procedural flaws" in the Federal Reports Act's clearance process "that preclude it from ever being fully successful in controlling the total paperwork burden on the American public." [28] These perceived flaws included the exemption of the IRS and the bank supervisory agencies from the Act's provisions, and the shared jurisdiction between GAO and OMB over the reports clearance process. The Commission also found that the clearance process had not been given sufficient resources to fulfill its statutory mandate, and that it lacked effectiveness since the process occurred too late in the creation of new regulations. [29] Another important finding by the Commission pertaining to the costly paperwork burden placed on the American public concluded that information is a valuable resource which should be managed with the same vigor directed to financial or physical resources. [30]

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[25] 87 Stat. 593-594, sec. 409.

[26] 88 Stat. 1789-1792.

[27] U.S. Commission on Federal Paperwork. *Final Summary Report.* Washington, U.S. Govt. Print. Off., 1977. Appendix B-1.

[28] Ibid., p. B-26.

[29] Ibid., p. B-27.

[30] Horton, Forest W. and Marchand, Donald, A., editors. *Information Management in Public Administration.* Arlington, Virginia, Information Resources Press, 1982. p. 5.

Finally, the Commission on Federal Paperwork recommended enactment of new legislation to eliminate these perceived structural flaws within the Federal Reports Act. Other Commission recommendations focused on the need for the Federal agencies to be assigned greater administrative responsibilities pertaining to paperwork and information management that were not specified in the Act. [31]

The statute creating the Commission on Federal Paperwork required OMB to formulate its views on the Commission's final recommendations, and to implement them, where feasible. By September 1979, according to an OMB status report, more than fifty percent of the Commission's recommendations pertaining to executive branch activities had been implemented. [32] The following March, however, GAO in an independent assessment of OMB's progress, criticized OMB for overstating its progress in implementing the Commission's recommendations. GAO recommended that the Congress enact legislation requiring OMB to "establish a legislative program for those recommendations still pending, and create an Office of Federal Information Policy within OMB." [33]

## REFORM INITIATIVES DURING THE 96TH CONGRESS

The final recommendations of the Federal Paperwork Commission were reflected in congressional and executive branch initiatives in 1979 to provide new statutory controls for controlling Federal paperwork requirements imposed on the private sector. [34] During the first session of the 96th Congress, legislation was introduced in both the Senate and House aimed at addressing several of the Commission's concerns. In November 1979, The Senate Governmental Affairs Subcommittee on Federal Spending Practices and

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[31] Ibid., p. B-27-28.

[32] United States. Office of Management and Budget. *Paperwork and Red Tape: New Perspectives and New Directions*. A Report to the President and the Congress from the Office of Management and Budget. Washington, U.S. Govt. Print. Off., September 1979. p. 5.

[33] U.S. Congress. General Accounting Office. Report to the Congress by the Comptroller General. *Program to Follow-up Federal Paperwork Commission Recommendations is in Trouble*. Washington, U.S. Govt. Print. Off., GGD-80-36. March 14, 1980. p. i-iv.

[34] U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Spending Practices and Open Government. *Paperwork Reduction Act of 1980*. Senate Report No. 96-930, 96th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1980. p. 5.

Open Government held hearings on the "Paperwork and Redtape Reduction Act." [35]

President Jimmy Carter brought to his Administration an announced commitment to Government efficiency and the necessity of paperwork-reduction initiatives. [36] On November 30, 1979, President Carter issued an executive order entitled "Paperwork," in which he established procedures for executive branch agencies to minimize their use of forms as well as paperwork burdens resulting from proposed legislation and regulations. A major provision of E.O. 12174 was the creation of an annual paperwork "budget" prepared by Federal agencies setting forth "an estimate of the total number of hours needed to comply with information requests." [37]

President Carter issued a message to the 96th Congress the same day outlining the progress being made toward the reduction of paperwork requirements. The President stressed the need for new legislation to overcome the existing weaknesses of the 1942 Federal Reports Act, and praised the leaders of the Senate Governmental Affairs and House Government Operations Committees for their "cooperative effort" in developing a paperwork reduction program. [38]

## THE PAPERWORK REDUCTION ACT OF 1980

Two months later, on February 5, H.R. 6410, the Paperwork Reduction Act of 1980, was introduced in the House by Representative Jack Brooks, Chairman of the House Committee on Government Operations, and Representatives Frank Horton, Richardson Preyer, and Tom Steed. "This legislation," Chairman Brooks explained at a subsequent hearing, was the "result of growing concern by the Congress and the President that something must be done to improve the way the Government collects, uses, and disseminates information." OMB's Office of Information and Regulatory Affairs (OIRA) was authorized to develop uniform information policies and to increase the availability and accuracy of Federal data. Federal information management activities would be strengthened by the creation of an Office of Federal Information Policy within OMB. As the companion bill to S. 1411, the new legislation would better define OMB's oversight responsibilities of Federal reporting requirements and eliminate all agency exemptions to the Act, except for the Federal Election Commission. [39]

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[35] U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Spending Practices and Open Government. *Paperwork and Redtape Reduction Act of 1979*. Hearings, November 1, 1979. 96th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1979. 190 p.

[36] U.S. President, 1977-1981 (Carter). Federal Paperwork Reduction. *Weekly Compilation of Presidential Documents*, v. 15, November 30, 1979. Washington, U.S. Govt. Print. Off., 1979. p. 2176 and p. 2181.

[37] Executive Order 12174, November 30, 1979. 3 CFR (1980) 462.

[38] Federal Paperwork Reduction, *Weekly Compilation of Presidential Documents*, p. 2182.

Following extensive hearings, the House Committee on Government Operations reported H.R. 6410, on March 4, 1980, and the full House approved the measure on March 24. [40]

S. 1411, the Senate version of the Paperwork Reduction Act, received a number of substantial amendments during the bill's consideration by the Senate Governmental Affairs Committee. One amendment set a goal of reducing the paperwork burden by 25 percent over a three-year period. Another major amendment placed additional statutory responsibilities upon the proposed Office of Information and Regulatory Affairs. The legislation was further amended to require Federal agencies to submit all proposed regulations containing paperwork requirements to OMB for review and formal consent. Another Committee amendment restricted the bill's applicability to the Department of Defense, because the Senate Governmental Affairs Committee believed that the House provisions had granted GSA excessive authority in reviewing DoD's computer purchases. [41]

After a lengthy floor debate, the amended version of S.1411 was passed by the Senate on November 19, 1980. The Senate then immediately took up consideration of H.R. 6410 and substituted the amended Senate language for the House version. H.R. 6410 was then passed in lieu of S. 1411 and became the Senate version of the bill. [42] The House subsequently approved, by voice vote, the Senate amendments on December 1, 1980. [43]

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[39] U.S. Congress. House. Committee on Government Operations. Subcommittee on Legislation and National Security. *Paperwork Reduction Act of 1980.* Hearings, February 7, 21, and 26, 1980. 96th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1980. p. 1-3.

[40] Ibid, p. 35 and Brooks, Jack. Paperwork Reduction Act of 1980. Remarks in the House, *Congressional Record*, v. 126, March 24, 1980. p. 6208, 6214, 6216-6217.

[41] U.S. Congress. Senate. Committee on Governmental Affairs. *Paperwork Reduction Act of 1980.* Senate Report No. 96-930, 96th Cong., 2d Sess. U.S. Govt. Print. Off., 1980. p. 20-29.

## THE ACT'S OBJECTIVES AND REQUIREMENTS

Upon signing Public Law 96-511 [44] on December 11, 1980, President Carter stated that the Paperwork Reduction Act was an important step in eliminating wasteful and unnecessary Federal paperwork, which would enable the Government to "operate more efficiently for all our citizens." [45] One of the original co-sponsors also present at the signing ceremony, Representative Frank Horton, commented that the passage of the legislation was the "culmination" of the work of the Commission on Federal Paperwork. [46]

The Paperwork Reduction Act became effective on April 1, 1981. A major objective of the Act was to reduce the information burden imposed on the public by the Federal Government, while ensuring that Federal agencies collect only as much information as they need and can use effectively. The Act set in place mechanisms intended to measure and manage the Federal Government's information resources and established requirements for reducing the cost of collecting, managing, and disseminating information. Under the Act, the use of information technology to improve the efficiency of Federal programs and activities was also encouraged. In addition, the statistical policy function was assigned to the OMB Director, contributing to the reports clearance function and related information activities. [47]

To accomplish these objectives, the Act delegated several organizational and enforcement mechanisms to the Director of OMB and the Administrator of OIRA to manage a broad range of Federal information activities. Each executive branch agency was required to designate a senior official with agency-wide responsibility of information resources management.

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[42] Paperwork Reduction Act of 1980. Remarks in the Senate, *Congressional Record*, v. 126, November 19, 1980. p. 30193, 30171-30179, 30190-30193.

[43] Paperwork Reduction Act of 1980. Remarks in the House, *Congressional Record*, v. 126, December 1, 1980. p. 31228.

[44] 94 Stat. 2812-2826.

[45] U.S. President, 1977-1981 (Carter). Paperwork Reduction Act of 1980. *Weekly Compilation of Presidential Documents*. V. 16, December 11, 1980. p. 2795.

[46] Ibid., p. 2797.

[47] U.S. Department of Commerce. Office of Statistical Policy and Standards. The Paperwork Reduction Act of 1980. *Statistical Reporter*. Washington, January 1981. p. 112.

The Paperwork Reduction Act corrected many weaknesses inherent in the 1942 Federal Reports Act, and all agency exemptions from OMB's central paperwork control reviews were eliminated. [48] The Office of Management and Budget was given the goal of reducing the existing Federal paperwork burden fifteen percent by October 1, 1982, and an additional ten percent by October 1, 1983. It was also charged with the responsibility of developing a long-range itinerary pertaining to the automated data processing and telecommunication needs of the Federal Government. The Act further authorized OMB to administer the Information Collection Budget (ICB) established by President Carter in 1979. In addition, the creation of a Federal Information Locator System (FILS) was mandated by the new paperwork legislation that would include a directory of information resources and referral service to prevent duplication of data. [49]

## IMPLEMENTATION OF THE PAPERWORK REDUCTION ACT

As required by the Paperwork Reduction Act, OMB, through its Office of Information and Regulatory Affairs, reports annually to the Congress on progress in implementation of the Act. On April 1, 1982, OMB released its first report, stating that effective progress had been made in implementing the Act's policies of improved information management. OMB reported that OIRA had been established before the Act's required deadline, and that regulations had been issued to provide guidance to Federal agencies on complying with the Act's requirements. The Federal paperwork burden, according to OMB, had been reduced by nearly 17 percent since the Act's creation. [50]

Despite OMB's first-year favorable assessment on its implementation of the Act, various criticisms were lodged. Six months after the Act became effective, GAO reported that OMB had failed to fulfill its responsibilities under the Act, and had opted for a policy of "minimal guidance." [51] During House hearings on implementation of the 1980 Act, GAO Comptroller General Charles A. Bowsher testified that OMB had not provided the visible or forceful leadership necessary to achieve the Act's objectives, and had approved no formal plans for implementing the Act. [52]

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[48] General Accounting Office. *Implementing the Paperwork Reduction Act: Some Progress, But Many Problems Remain.* Report to the Chairman, House Committee on Government Operations by the Comptroller General. GAO/GGD-83-35, April 20, 1983. Washington, 1983, p. 3.

[49] 94 Stat. 2812-2826.

[50] United States. Office of Management and Budget. *Managing Federal Information Resources.* First Annual Report Under the Paperwork Reduction Act of 1980. Washington. April 1, 1982. p. 3-5.

Two years later, a GAO report prepared at the request of the House Committee on Government Operations concluded that, while OMB had been successful in meeting its requirement to reduce paperwork in terms of total percentages, it had been less successful in implementing the other statutory requirements of the Act. [53]

GAO found that OMB's decision to assign OIRA primary responsibility for its regulatory reform program hindered the ability of the OIRA staff to carry out its paperwork functions. "The act," GAO pointed out, provided "OIRA neither authority nor resources for performing reviews of regulations except for accessing compliance with the act's objectives for reducing paperwork." As a consequence of its extensive regulatory reform responsibilities, OIRA [had] not devoted full time to implementing the Paperwork Act." [54]

In order to better implement the Paperwork Reduction Act, the GAO report recommended that Congress might consider legislation requiring OMB to identify annually the resources needed to fully implement the Act and the funds expended for that purpose. More importantly, GAO stressed the need for a separate congressional appropriation for implementing the Act, and amend the Act to prohibit OIRA from performing any nonrelated duties. [55]

A second GAO report, issued in April 1983, addressed OMB's responsibilities under the Act for controlling recordkeeping requirements imposed on the public. [56] GAO found that it was difficult for businesses to identify and interpret the requirements, and they often retained records longer than required, resulting in an increased paperwork burden. The report suggested that OMB develop a "dependable guide" for businesses to identify pertinent recordkeeping requirements. [57]

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[51] U.S. Congress. House. Committee on Government Operations. Subcommittee on Legislation and National Security. *Implementation of the Paperwork Reduction Act of 1980 (Public Law 96-511).* Hearings. 97th Cong., 1st Sess. October 21, 1981. Washington, U.S. Govt. Print. Off., 1981. p. 13.

[52] Ibid., p. 3-4.

[53] GAO, *Implementing the Paperwork Reduction Act*, p. i-iv.

[54] Ibid., p. iii-iv.

[55] Ibid., p. v.

[56] General Accounting Office. *More Guidance and Controls Needed Over the Federal Recordkeeping Requirements Imposed on the Public.* Report to

Another problem affecting OMB's implementation of its clearance function under the Act, was the controversy over OMB's ability to disapprove an agency's information collection requests. The Department of Treasury, and the Internal Revenue Service, in particular, objected to OMB's attempts to review IRS forms and regulations that had originally been in existence prior to enactment of the Paperwork Reduction Act. [58] OMB requested the Justice Department's Office of Legal Counsel to settle the dispute between the two agencies. In a June 1982 opinion, the Office of Legal Counsel ruled that the Act's requirements applied only to rulemaking procedures initiated after the Act's effective date, and that its procedures could not be used to review existing regulations. [59] While the memorandum stated that OMB had the power to review the actual forms used to collect the data, the Justice Department's opinion was seen as a substantial defeat for the oversight authority of OIRA, since the Act's supporters believe that full IRS compliance is necessary since the agency accounts for more that 50 percent of the Federal paperwork burden. [60]

The Act also came under criticism from the business community. While the requirements of the Act were created to alleviate the private sector's frustration with Government-imposed paperwork burdens, other related problems were not addressed. In addition to the monetary costs associated with the actual recordkeeping requirements required by law, there are other costs imposed on business firms to "learn what the requirement is, to decide how to respond to it, and to implement the chosen response." And while the Act sought to simplify reporting requirements, the data collected from

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the Director, Office of Management and Budget. GAO/GGD-83-42, April 28, 1983. Washington, 1983. 10 p.

[57] Ibid., p. 1.

[58] Bernick, Daniel. Office of Management and Budget Receives Setback in Paperwork 'War'. *Tax Notes*, v. 16, July 5, 1982. p. 789.

[59] U.S. Department of Justice. Office of Legal Counsel. Office of the Assistant Attorney General. Memorandum RE: Paperwork Reduction Act of 1980. June 22, 1982. p. 56.

[60] Chegwidden, Cynthia S. Paperwork Reduction Controversy Enters Next Stage. *Tax Notes*, v. 15, November 1, 1982. p. 406.

information requests is often of value to the business firms that filled out the report. [61]

## PROPOSED AMENDMENTS TO THE ACT

The earlier congressional hearings and GAO studies led to the development of several proposed amendments to the Paperwork Reduction Act during the 98th Congress.

On November 7, 1983, the House passed H.R. 2718, the Paperwork Reduction Act Amendments of 1983 which established line item funding for the functions of OIRA specifically mandated by the original Act. The proposed legislation also clarified OMB's authority to review information collection requests in existing, as well as proposed, regulations. In addition to strengthening congressional oversight of OMB's mandate under the original Act, the proposed legislation would have extended the authorization of appropriations for OIRA for an additional four years through fiscal year 1988. [62]

In the Senate, S. 2433, the Paperwork Reduction Act Amendments of 1984, was introduced on March 15, 1984. As introduced, the bill would also have extended the authorization of appropriations for OIRA, and strengthened congressional oversight of OIRA by requiring Senate confirmation of its Administrator, a Presidential appointee. [63]

Passage of the Paperwork Reduction Act Amendments as introduced in the House and Senate would have increased congressional oversight of OIRA's activities, and clarified OMB's tasks and deadlines originally set forth in the Paperwork Reduction Act. Neither bill, however, was enacted before the 98th Congress adjourned. Critics of both bills felt that enactment of legislation to strengthen OIRA's oversight functions would have given OMB too much authority over the Federal Government's rulemaking process. [64]

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[61] Cole, Roland J. and Sommers, Paul. Government Paperwork: Not an Easy Villain After All. *Journal of Policy Analysis and Management*, V. 1, no. 4, Summer 1982. p. 554.

[62] Paperwork Reduction Act Amendments of 1983. Remarks in the House, *Congressional Record*, Daily Edition, v. 129, November 7, 1983. p. H9271-H9273.

[63] Danforth, John C. and Chiles, Lawton. Paperwork Reduction Act Amendments of 1984. Remarks in the Senate, *Congressional Record*, Daily Edition, v. 130, March 15, 1984. p. S2789-2793.

[64] OMB's Regulatory Activities Draw Fire in Congress, Courts. *Congressional Quarterly Weekly Report*, v. 44, June 14, 1986. p. 1339.

## THE PAPERWORK REDUCTION REAUTHORIZATION ACT OF 1986

When the authorization for OIRA expired at the end of 1983, it was funded on an annual basis from OMB's general authorization until the passage of the Paperwork Reduction Act of 1986. [65] The reauthorization provided separate funding for OIRA in the performance of its functions contained in the original Paperwork Reduction Act, specifically $5.5 million for each of the three fiscal years 1987 through 1989. All future Administrators of OIRA had to be appointed by the President and confirmed by the Senate. A new Information Technology Fund to be administered by GSA was also created, as well as the position of a chief statistician. New paperwork reduction goals of fifteen percent for fiscal years 1987-89 were established by the reauthorization. In addition, the Federal Information Locator System (FILS) was required to be accessible to the public for locating government information. [66]

The successful passage of the reauthorization legislation was the result of discussions among Senator Lawton Chiles and Representatives Jack Brooks and Frank Horton, original sponsors of the Paperwork Reduction Act, and the Reagan Administration. Senator Chiles, citing a "fresh agreement between the Congress and the Executive," stated in floor debate that the reauthorization was the product of three years' effort to provide funding for OIRA and correct deficiencies in the Act. He also emphasized that it would "strengthen the Federal Government's ability to minimize the paperwork and regulatory burden upon the public." [67]

## RELATED LEGISLATION

Several pieces of legislation were introduced during the 100th Congress which contained provisions pertaining to paperwork reduction. H.R. 3157, the Agricultural Paperwork Reduction Act of 1987, would have required the Secretary of Agriculture to formulate proposals to reduce recordkeeping and paperwork requirements related to Federal price support programs. The Immigration Employment Paperwork Reduction Act of 1987, introduced as H.R. 3701, would have amended the Immigration and Nationality Act to make voluntary the use of the employment verification paperwork system. H.R. 2328, which would have provided new job opportunities on Federal construction contracts, contained a provision which reduced unnecessary paperwork and reporting requirements for employees' weekly wage statements. None of these bills were enacted during the 100th Congress.

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[65] U.S. Congress. House. *Making Continuing Appropriations for Fiscal Year 1987.* Conference Report to Accompany H.J. Res. 738. House Report 99-1005, 99th Cong., 2d Sess. Washington, U.S. Govt. Print Off., 1986. p. 771.

[66] The Paperwork Reduction Reauthorization Act of 1986 was contained in Title VIII of the Continuing Appropriations Act for Fiscal Year 1987. Public Law 99-591, 100 Stat. 3341.

[67] Chiles, Lawton. The Paperwork Reduction Act of 1986. Remarks in the Senate, *Congressional Record*, v. 132, October 16, 1986. p. S16739.

The Reauthorization of the Office of Federal Procurement Policy Act of 1988, Public Law 100-679 was signed into law by President Ronald Reagan on November 17, 1988. The legislation creates a Federal Acquisition Regulatory Council to assist in the coordination of Federal procurement regulatory activities. The Council is required to issue a report every six months which will include a statement as to whether or not any procurement regulations under consideration or review by the OFPP have paperwork requirements. Within 180 days after enactment of P.L. 100-679, the Council is also required to submit a report to Congress, after consultation with the Administrator of the Office of Information and Regulatory Affairs, outlining the extent of the burden of procurement-generated paperwork. The report is also required to suggest ways in which the Federal procurement system can be streamlined to reduce paperwork burdens while maintaining the integrity of the procurement system.

## IMPLEMENTATION

Since the Paperwork Reduction Act became effective in April 1981, congressional oversight hearings and studies by the General Accounting Office have consistently found that while OMB and OIRA have been successful in meeting the Act's paperwork reduction goals, further improvement is needed to implement the other statutory requirements. Senator Chiles stated that "as the experience of the past five years reveal and as the hearings by both the House and Senate document, there is much progress yet to be made" if the Act's statutory objectives "are to lead to the achievements envisioned by the framers of the Paperwork Act." [68]

OMB Watch, a non-profit research organization which has closely monitored OMB's implementation of the Act, characterized the 1986 reauthorization of OIRA as a "quick fix" on the part of the 99th Congress without hearings or debate. The reauthorization, in the opinion of OMB Watch, did not address "OIRA's misuse of its paperwork powers" which in turn requires agencies to "change program and policy decisions." [69]

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[68] Ibid., p. S16741.

[69] Paperwork Reduction: The Quick Fix of 1986. *OMB Watch*. November 1986. p. i.

According to Senator Chiles, however, the 1986 reauthorization of the Paperwork Reduction Act represents a "reaffirmation of what Congress intended in 1980." [70] The new provisions provide increased congressional oversight of OIRA's activities to ensure that the office uses its appropriated resources as mandated by the original Act. There is also a greater opportunity, under the reauthorization, for public participation in commenting on proposed reporting requirements to ensure "open and timely decisions." [71]

With greater accountability to Congress and the public, Senator Chiles stressed, OIRA will have to take a strong leadership role in carrying out its information management responsibilities under the Act. OIRA's activities, he told his Senate colleagues, will be closely monitored to determine "whether the results the Congress, the Executive, and the American public want can be obtained." [72]

In its fifth annual report under the Paperwork Reduction Act issued in April 1987, OMB stated that it had taken a leadership role in several areas of Federal information resources management. During the period April 1, 1985, through December 1986, OMB reported that it had reviewed over 3,000 requests made by Federal agencies for clearance of data collections. While it had been successful in meeting its paperwork reduction goals, OMB stated that further decreases in paperwork would be more difficult to obtain, since "significant future reductions" would require regulatory or statutory authority to eliminate existing information collection requirements. [73]

The Congress continues to recognize the extent of the paperwork burden on the American public, and introduced legislation during the 100th Congress pertaining to the paperwork involved in immigration policies, construction contracts, and agricultural price support programs. With its passage of the reauthorization of OFPP, the 100th Congress included provisions requiring the impact of paperwork burdens associated with proposed procurement requirements.

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[70] Chiles, Paperwork Reduction Act of 1986, p. S16739.

[71] Ibid.

[72] Ibid., p. S16740.

[73] United States. Office of Management and Budget. *Managing Federal Information Resources*. Fifth Annual Report under the Paperwork Reduction Act of 1980. Washington, April 1987. p. 1.

## CONCLUSION

Despite passage of the 1986 Paperwork Reduction Reauthorization Act, OMB has been criticized for focusing on paperwork clearance while failing to comply with its statutory requirements to oversee statistical policy and records management.[74] The Reagan Administration has also been cited with encouraging a "politicized OMB" to restrict the types of information gathered by the Federal agencies and to decrease the number of public service publications that are made available. [75] Under the general requirements of the Paperwork Reduction Act, OMB issued Circular A-130 entitled "The Management of Federal Information Resources" on December 12, 1985, which is considered by the private information industry to be an "articulation of a restrictive policy on information dissemination." [76]

An April 1988 *Technology Review* article, entitled "The Dangers of Information Control," stated that "a decade of restrictive information policies has significantly affected important aspects of national life" and "[t]he public has been deprived of information it has paid for with tax dollars...." The authors suggested that the new Bush Administration should "curtail OMB's authority over the collection and dissemination of information" and join with Congress in amending the Paperwork Reduction Act to liberalize the current information policy. [77]

OMB Watch and authors Gary Bass and David Plocher recommended that President Bush and Congress jointly strive to articulate a "national information policy" ensuring that the Federal Government collect and disseminate comprehensive data and information while protecting the privacy of individuals. They also recommended that the Paperwork Reduction Act be amended to limit OIRA's paperwork clearance functions with greater emphasis placed on oversight of information practices. OMB Watch and the authors fault both the Congress and President with failing to provide direction for establishing a Federal information policy, thereby allowing OMB to overstep its authority under the Act. [78]

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[74] Bass, Gary and Plocher, David. *Strengthening Federal Information Policy: Opportunities and Realities at OMB.* Washington, D.C., Benton Foundation, 1989. p. 27.

[75] Free Advice to Our Next President: Restrict OIRA. *The OMB Watcher,* v. 1, no. 5, October/November 1988. p. 5.

[76] *Strengthening Federal Information Policy,* p. 31.

[77] Shattuck, John and Spence, Muriel Morisey. The Dangers of Information Control. *Technology Review,* v. 91, April 1988. p. 73.

The authorization for OIRA will expire September 30, 1989, under the Paperwork Reduction Reauthorization Act which has provided funding for the last three fiscal years. The necessity for Congress to reauthorize OIRA and the inauguration of the new Bush Administration provide the opportunity for a thorough re-examination of the Paperwork Reduction Act enacted nearly ten years ago.

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[78] *Free Advice to Our Next President*, p.5-6; and *Strengthening Federal Information Policy*, p. 41-46. Author Gary Bass is executive director and founder of *OMB Watch* and co-author David Plocher is an *OMB Watch* staff attorney.

# COMMUNICATIONS POLICY AND THE PUBLIC'S RIGHT TO KNOW

## PUBLIC ACCESS TO ELECTRONIC PUBLIC INFORMATION

BY

JERRY J. BERMAN

TO BE PUBLISHED BY
THE MARKLE FOUNDATION
JUNE 1989

# COMMUNICATIONS POLICY AND THE PUBLIC'S RIGHT TO KNOW

# PUBLIC ACCESS TO ELECTRONIC PUBLIC INFORMATION

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JERRY J. BERMAN

## I. Introduction

The "public's right-to-know" about the business of government is a fundamental principle of our democratic government and open society. In the present era of computerized government information, this right will only be insured if public law and policy guarantee and expand citizen access to electronic public information.*

Over the past two decades, the federal government has systematically exploited computer and communications technology to conduct its business more effectively, efficiently, and economically. In the process, federal agencies have converted public information from paper documents and data files into electronic database systems. Federal agencies routinely manipulate this computer data to fulfill agency missions from determining the taxes owed by citizens to calculating eligibility for social security benefits. A growing number of agencies require businesses and corporations to provide data collected for regulatory purposes in electronic formats and in turn the government fulfills its information disclosure responsibilities by disseminating electronic public information through government, commercial, and non-profit interactive computer and communications networks.

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* In this essay public information is defined as federal government information which is either disseminated by federal agencies or which must be disclosed under the laws of the United States. Thus, it does not include government created or collected information which is exempt from disclosure under the Freedom of Information Act, such as classified national security information or personally identifiable information which would violate individual privacy. Citizen access to electronic public information under state law is beyond the scope of this essay.

This fundamental transformation of public information and public decision-making into computerized data processes has occurred without serious public policy attention being paid to how it may affect the public's right to know. Moreover, there has been no public policy debate or concerted effort initiated to resolve electronic information policy issues with citizen access rights as a core concern.

This debate is of critical importance today. As federal officials tout the potential emergence of wholly "paperless" agencies by the year 2000, the laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date. The Freedom of Information Act, the principal federal information access statute, was enacted prior to this full-scale government computerization and was crafted to resolve citizen access rights to published information or to printouts from computerized files.

The Paperwork Reduction Act of 1980 was designed to stream-line federal information resource management in part through increased government computerization. The Act offers little guidance on how federal information management goals should be achieved in relation to public access rights to electronic information.

When these statutes were enacted, it was valid to assume that government policy did not have to consider such a right of access. The ability to own and use powerful computers capable of receiving, storing, and manipulating government electronic data was beyond the economic and technical reach of most of the constituencies that seek and use government information to conduct their business or monitor government decision-making. In the last several years, however, the "PC Revolution" has brought advanced computing power within the reach of most citizens and organizations who use government data. Today, small businesses, public interest groups, the press, and other users of government information do not have to rely solely on published public information or "printouts" of computerized government data. They possess the technical potential for receiving and analyzing electronic public information.

If this potential is to be realized, the constituencies that principally rely on published government information first need to understand their stake in achieving effective access to electronic public information. Public policy that supports citizen access rights to electronic information will not be instituted until constituencies committed to the public access rights actively work to formulate and implement such a policy.

A principal purpose of this essay is to describe through concrete examples how citizen access to computerized government data can be a powerful tool for monitoring government and private sector decision-making which affect important public interests. The Environmental Protection Agency's effort to implement a congressionally mandated database to disseminate information on toxic chemical emissions into the environment will provide a vivid case in point.

The case for new electronic information policy also involves public awareness of how traditional access to published government information, as well as computerized public data, may be compromised if public rights to electronic information are not instituted. As this essay documents, outmoded government information law and policies are creating new forms of government secrecy in the computer age and inequities between different constituencies in terms of their ability to afford, access, and use electronic public information.

To establish why expanding public access to electronic public information through on-line databases and other information technology mediums should be a public policy goal is only the first step.** Significant legal, policy, and practical issues need to be addressed and resolved by the Congress and the

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**Throughout this essay, public access to electronic public information should be understood to broadly include access to public information available through online databases, tape, floppy diskette, CD Rom, or other electronic storage mediums.

Executive Branch before effective access will be realized. This essay attempts to identify some of the critical electronic information access issues and sets out a number of policy initiatives and proposals for addressing them. It also recommends policy initiatives to achieve the ultimate goal---an "electronic" Freedom of Information Act.

## II. Electronic Government and Who It Serves

The federal government today is ushering in the era of electronic government by developing electronic information collection, processing, and dissemination systems. Federal government expenditures for information technology and electronic data systems are increasing at a significant rate. In 1982 the federal government spent $9.2 billion for information technology. Recent estimates indicate that expenditures for electronic data systems have now reached over $15 billion annually.[1]

As the government transforms public information into electronic formats and databases, this information is then made available to the public by government and commercial information providers.[2] By one estimate, there are over 440 government databases disseminating electronic information to the public today.[3] The Commerce and Labor departments provide on-line databases of significant business and labor statistics and reports. The Census Bureau makes statistical data and reports available over its CENDATA system. The Commerce Department's National Technical Information System (NTIS) distributes tapes and diskettes of scientific research reports and statistics. The

National Library of Medicine, a government agency which markets information in many ways similar to a commercial firm, offers a number of on-line technical information databases through its MEDLARS electronic dissemination system.[4]

Commercial information industry providers such as DIALOG, MEAD Data, and BRS are principal disseminators of electronic public information.[5] As government data increasingly resides in electronic mediums, these firms actively seek out and obtain government computerized data, add "value enhancements" to make the data more useful and "user-friendly" and sell it to commercial subscribers. They also serve as "gateways" for public systems by offering their subscribers many of the government databases available directly from federal agencies.[6]

The development of these public electronic databases greatly enhances the ability of those who access these government and commercial systems to monitor government activity and regulatory affairs. They permit users to access time-sensitive data, search through document databases to seek out and rapidly find relevant information, and work with data subsets to perform complicated statistical and data analysis.[7]

If the federal government's development of electronic public information systems were guided by an overall policy to enhance public access, one would expect to find evidence of government-wide programs to implement electronic data systems to serve a cross-section of public constituencies. For example, one might find major electronic projects underway not only to disseminate information about business, scientific, and business regulatory affairs but also electronic data relating to government programs and decision-making in areas such as environmental protection, law enforcement, and occupational health and safety. In developing these databases, policymakers would be wrestling with issues of pricing to insure that interested constituencies could afford to use these information systems. They would also be exploring necessary system requirements to make these databases readily accessible to computer users who are not proficient in computer skills.

Instead of government-wide programs, the major federal agency electronic collection and dissemination systems under development are concentrated in the business and regulatory area. Significant federal expenditures are targeted for the development of electronic systems such as the Patent Office's Automated Trademark System, the Federal Maritime Commission's electronic tariff filing system, the Department of Transportation's International Tariff Filings, and the Security and Exchange Commission's Electronic Data Gathering System (EDGAR).[8] For example the EDGAR system, which will handle over 6 million pages of security filings per year, making the SEC potentially the first "paperless" agency of the future, will cost $50 million dollars over the next five years.[9]

While the development of these systems will serve important governmental interests, the principal government policy objective has been to improve the efficiency and cost effectiveness of its regulatory operations. These systems have that potential because there are commercial markets for this information since it is vital to business and regulated industries. This potential in turn has spurred members of the growing information industry to develop partnerships with government to design and build these major systems and to work to structure them in ways which will permit them to develop commercial markets for this data.[10]

The government's preoccupation with cost savings over public access considerations is amply demonstrated by the initial efforts to establish an Automated Trademark Office. Even though the rates charged for electronic databases are a major factor in determining who may be in a position to afford to use them, the Patent and Trademark Office tried to minimize the government's cost to develop an Automated Trademark system but in a way which would make it expensive for potential users. As documented in a House Government Operations Report, the Patent and Trademark Office attempted to satisfy its internal needs for electronic trademark data by entering an agreement with a private information contractor under which the Trademark Office would use the system at no cost in exchange for which the private contractor would have the exclusive right to sell the electronic trademark data to all others under non-competitive conditions. This "bartering" arrangement, which had the potential for creating a private information monopoly over electronic trademark data, was successfully opposed by a members of Congress, user groups, and other information vendors.[11]

In contrast, the SEC's EDGAR system has been designed to meet government needs for electronic data but to broaden public access to EDGAR data through a diversity of information sources and competitive pricing. EDGAR, the product of give-and-take between SEC officials, the Congress, and information industry representatives, is viewed as a possible model for future electronic information systems.[12]

As structured, the SEC will expend appropriated funds to establish the basic EDGAR system. All "value-added enhancements", such as sophisticated search capabilities and menus which make the system user-friendly, will be developed by the contractor who markets the EDGAR data commercially. However, to prevent the development of a private information monopoly and create a "level playing field" among competitors, the statute governing EDGAR mandates that other information vendors may purchase the EDGAR data at the marginal cost of reproduction, add-value enhancements, and also market the data. As the information will be available through a diversity of sources, it is anticipated that competitive pricing will make the system affordable to many potential users.[13]

The EDGAR system constitutes an important step in the development of electronic information policy options because it avoids the creation of an information monopoly and insures a diversity of EDGAR data sources. However, it does not resolve critical issues about how to design and implement electronic information systems that insure broad public access to electronic information.

While the public at large may be uninterested in security filings and studying "10-B forms," public interest groups, investigative reporters, and academic researchers may well want access to this information. While competition among vendors may bring the cost of the EDGAR database systems within the reach of the general public, there is no guarantee that it will. If it does not, the government will in effect have developed a sophisticated information system which disseminates the most useful version of public information only to the affluent.

The EDGAR system's provision for general public access to the database demonstrates this point. While the commercial user "dials-up", "down-loads", and manipulates EDGAR data, the public user who may not be able to afford these services may use public terminals. However, they are available at only three locations---the SEC Headquarters in Washington, D.C. and at its New York and Chicago regional offices.[14] Of course, not all interested users are located within easy reach of these SEC reference rooms. Moreover, the system will be a basic version of EDGAR which permits reading files and searching through the database but will have none of the "value-added" enhancements, such as analysis capability which likely will be available through the commercial systems.[15]

This may be adequate public access for security data. However, it will not be sufficient for meeting public access needs for the electronic dissemination of data of importance to wider public constituencies. For example, EDGAR's public access requirements would not provide sufficient public access to electronic data disseminated by agencies such as the Food and Drug Administration[16] or the Environmental Protection Agency.[17]

The larger issue is whether electronic data systems will only be developed when the system is cost-effective because there is a ready commercial market for the information. If this is the case, it is difficult to foresee the circumstances under which the government will develop major systems on its own initiative dealing with health, education, and welfare---areas of vital public importance but where the profitability of electronic data dissemination is uncertain. In such circumstances, public access and use may have to be underwritten by "fee waivers" or reduced fees similar to those available under the Freedom of Information Act.[18]

One response is that the federal government is establishing electronic information systems responsive to broader public interests. In fact, a few government agencies are making efforts to provide citizens with inexpensive on-line databases of public information and reports.[19] These include agencies which have a statutory obligation to disseminate information to the public such as the Census Bureau, the Department of Agriculture and Department of Education.[20] Some agencies will even do computer searches for citizens who lack computer skills or provide some user training in how to use their databases.[21] But these systems are not the principal recipients of federal electronic information expenditures or the focus of information policy managers. The government is doing little to inform citizens about these programs or to make them user-friendly. It does not even provide a printed or computerized listing of available government databases.[22] Thus, a computer user may be surprised to learn that some government databases may be directly available from an agency at half the price of accessing these same databases through a commercial network.[23]

The federal government is not going to develop government-wide electronic information systems responsive to broad public information needs on its own initiative. In the same way citizens achieved access to published government information, public constituencies will have to make a political demand for access rights to electronic government information and address the legal barriers and public policy assumptions which today limit their ability to share in the benefits of the emerging electronic government.[24]

## III. Legal and Policy Barriers to Public Access to Electronic Public Information.

Today, citizens have broad statutory rights of access to published government information but no clear right to electronic public information. The Freedom of Information Act, the principal statute establishing citizen rights to public information, was enacted in 1966 and significantly amended in 1974.[25] While the legislation was considered when the government was in the process of computerizing its internal operations, it was not yet contemplated that the computer revolution would soon give citizens the capability of accessing and using computerized public information. Thus, the provisions of the Act are crafted exclusively in terms of citizen access to published data. While the legislative history of the 1974 amendments deal with government computerization, the drafters did so only to make it clear that the Act required federal agencies to conduct reasonable searches of their computerized databases and produce "printouts" of public records subject to disclosure under the Act.[26]

In 1980 Congress passed the Paperwork Reduction Act which has since guided government computerization.[27] The Act, designed to minimize the federal paperwork burden on citizens and "minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information"[28] encourages federal agencies to use advanced computer and communications technology to accomplish these missions. In the statement of purposes, the Act makes no mention of using this technology to serve the goal of enhancing public access to information in the computer age. The aim of federal information technology management is to:

> ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and whenever practicable and appropriate, reduces the information processing burden for the Federal Government...[29]

Under the Paperwork Reduction Act, the authority for developing and implementing "uniform and consistent information management policies" is vested in the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).[30] In December 1985, OIRA published its final version of OMB Circular A-130 on "The Management of Federal Information Resources" which sets out current federal information policy assumptions, procedures, and guidelines.[31]

As a statement of federal government management policy on electronic collection and dissemination, Circular A-130 adheres to the mandate of the Paperwork Reduction Act. It contains no policy assumption to support or enhance broad citizen access to electronic information. Circular A-130 recognizes the value of the public's right to know by stating that "knowledge of their government" is essential for citizens and a means for ensuring "the accountability of government." It also states that "the free flow of information from the government to its citizens and vice versa is essential to a democratic society."[32] But the federal information managament policy set forth in Circular A-130 assumes that the public's right to know is satisfied if citizens have access to published information.[33]

Circular A-130 defines access to information as the function of providing citizens, "upon their request", with government information which they are entitled to under law.[34] In managing federal information resources, Circular A-130 states that this "right to access government information must be protected..."[35] As already noted, however, the Freedom of Information Act does not establish a clear public right of access to electronic data.

While judicial interpretations of the FOIA have held that computer data may be subject to the Act,[36] the courts have ruled that the government is not obligated to provide citizens with the electronic version of public information.[37] If the information is available in published and electronic format, the government may choose which to provide in fulfilling its FOIA responsibility to respond to citizen requests for public record information.[38]

Circular A-130 incorporates the assumption that citizens are not entitled to electronic public information into its policy on information dissemination. A-130 states that information should be disseminated to citizens "as required by law."[39] The problem again is that there is only one federal statute---Title III of the 1986 Superfund Law---which explicitly requires the federal government to make electronic public information available to the public on-line and through other electronic information technology means.[40]

Circular A-130 has significant public policy implications for public access to electronic information since OMB's information resource management policy objectives include the active encouragement of federal agencies to develop electronic database collection and dissemination systems for their internal purposes and for disseminating information to the public. However, under A-130, the justification for developing electronic information systems is to achieve government efficiency and cost savings rather than to expand the public's right to know. As Circular A-130 states:

> Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; for example, an agency's shift to electronic filing of reports, perhaps carried out primarily in order to improve internal information management, might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government and also improve the performance of the agency's information access function.[41]

To achieve cost savings and efficiencies, A-130 requires federal agencies to place "maximum feasible reliance on the private sector for...dissemination of [information] products and services."[42] Before agencies embark on developing electronic information systems, they also are required to examine private sector services to avoid possible duplication.[43]

While the requirement that federal agencies rely on the private sector for the development of information products and services has been criticized by some as detrimental, in and of itself, to public information rights,[44] this is not the principal policy barrier to advancing public information access rights. In many cases, the private sector information industry may develop or offer more economical and useful information products and services than the government could develop on its own. Instead, the fundamental barrier to public access to electronic information is A-130's requirement that

> where the information is already substantially available in printed form, agencies may consider dissemination in electronic form to be a service of special benefit the costs of which should be recovered through user charges.[45]

This, in effect, amounts to a public policy which permits the development of electronic information dissemination systems but structured in ways detrimental to public access. The government is encouraging federal agencies to develop governmental electronic information systems in partnership with the private sector information industry but to minimize the cost to the government by passing much of it on to the end users. Even though this may create price barriers that make electronic data systems unaffordable and inaccessible to most citizens, government policy assumes that access rights are not infringed or affected because "the information is already substantially available in printed form..."

Under Circular A-130, the only circumstances under which a government agency has an obligation to develop electronic data systems which make them readily accessible to the public at large through fee waivers and reduced charges is when an agency has

> a positive obligation to place a government [information] product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some recipients from the charge.[46]

However, since there are no general statutory requirements for federal agencies to disseminate electronic information to citizens when a printed version is available, the policy is inoperative.

To underscore the present government's assumption that citizen access rights are met by merely providing published information, one other facet of OMB information policy is worth highlighting. Circular A-130 points to the depository libraries as serving as an information "safety net" for the citizenry. As stated in the Circular:

> The depository libraries provide a kind of information safety net to the public, an existing institutional mechanism that guarantees a minimum level of availability of government information to all members of the public. Providing publications to the depository libraries program complies with the law and costs executive agencies virtually nothing.[47]

In the context of present federal electronic public information, the "safety net" is shredded from the outset. The definition of "publication" in A-130 does not include electronic data tapes, diskettes or other electronically formatted information products. In effect, federal agencies are merely required to supply paper documents to the depository libraries.[48]

## IV. Government Secrecy in the Computer Age

In this advanced era of computerized government, the failure to establish or clarify citizen access rights to computerized data is having a negative impact on the public's right to know. As already stated, public policy barriers are in place which may deny many citizens effective access to public information which the government affirmatively makes available through electronic databases. The uncertainty of citizen rights to computerized data is also acting as a legal impediment to citizen access to both published and computerized versions of government information and transactional data which federal agencies do not want to make public or only consider making public when a citizen makes a request for it.

Transactional data involves the specifics of how the government "transacts" government affairs from dispensing welfare to meeting its legal mandate to collect taxes or clean up the environment. It is the information which citizens seek under the Freedom of Information Act. Obtaining access to it is critical for protecting open government and insuring government accountability. However, because the disclosure of this data often subjects the government to public criticism, agencies often attempt to resist citizen efforts to make it public by claiming that it is "exempt" from disclosure under the FOIA.[49]

Today, citizens are finding that the government is using computerization and the uncertain status of citizen rights of access to electronic information under the FOIA as a new means for keeping information secret both in published and computerized form. A "technology of freedom"[50] threatens to become a "technology of secrecy."[51]

## Traditional Access Rights and Computer Secrecy

As citizens ply the government for published information about sensitive matters such as the enforcement of health and safety laws or on-going scientific research which may have national security implications, the government is using the fact that transactional information is today stored in databases which require new programming or complex computer queries to extract it as a roadblock to access. Citizens are finding that some sensitive transactional data is no longer readily accessible from agency "records" subject to disclosure under the FOIA.

The potential for a new form of secrecy in the computer age was broached as early as 1974 in a seminal article by Professor Alan Westin. In "The Technology of Secrecy,"[52] Westin observed that in computerizing its operations, the government was not motivated by a concern about the impact of computerization on public access to information. After interviewing agency officials, Westin determined that while computerization was making it no more difficult and sometimes more easy for agencies to meet citizen demands for information under the Freedom of Information Act, these public access results were

> essentially by-products of the primary goals of improving data services to clients and management. Improving the production of information to other parties, such as the press or public interest groups investigating government operations, was not a goal of computerization. Several of the agency replies stated this explicitly.[53]

Westin worried that unless government made public access a goal of computerization by insuring that computers were programmed to extract information valuable to citizens it was possible that citizens would not achieve the benefits of computerized information processing but instead encounter new forms of government secrecy. In attempting to interest policy makers in the issue, Westin gave concrete examples of how appropriate public access programing could enhance the public's right to know as well as examples of how the failure to require such programming could impede access.

To illustrate the positive case for access to computerized information, Professor Westin used an example provided by Ronald Plesser, then working with Ralph Nader, of data that would have been "difficult if not impossible to get from the previous manual file."[54]

> When the Nader Congress project was under way in 1972, the researchers wanted to find out what stocks were owned by each Congressman and candidate for Congress in 1972. But Mr Plesser noted, 'We would have had to go through 10,000 files to get the names.' However, the Nader group learned that the SEC had a name-access program for this ownership file, and asked to have a list compiled of each Congressman and candidate for Congress in 1972....[T]he Nader group persuaded the SEC to supply the list, and it aided the Nader Congress research greatly.[55]

To illustrate the possible negative implications for public access if government computers were not programmed to respond to specific citizen requests for information, Westin again used the Nader group experience:

> [T]he Nader associates [Plesser and Harrison Wellford] cited several examples where files had been computerized, but the absence of a software program to produce the desired information prevented them from obtaining the data they needed....[One] example involved meat-inspection reports and pesticide data. The Center for Responsive Law won the right to inspect these at the Agriculture Department. Some of these data were computerized, but when the Center wanted information on a statewide basis, it was told that it would require costly reprogramming which, Mr. Wellford observed, was 'beyond our ability to pay.'[56]

As Westin emphasized:

> The Nader group experience underscores the fact that more information of the kind sought by public interest groups is potentially available in the computerized files than had been provided in manual records. But where the agency has not provided software programming to extract what these groups want, it is not yet clear under interpretations of the Freedom of Information Act whether a demand can be made that such expensive reprogramming, often interfering with vital computer services, can be required of the government.[57]

If citizens could not demand access to computerized data as a matter of right or did not make it a public policy objective of government to develop computer systems to enhance citizen access to information, Westin feared that advancing computerization of government operations might continue to be "a case of lost opportunities and...potentially great danger..."[58] to the public's right to know.

In 1974, when Congress amended the Freedom of Information Act, citizens did not demand and the final statute did not require the government to program its computers to insure that public information would always be available. Although legislation was proposed by democratic Senator Lee Metcalf to mandate such a requirement, it was not included in the final 1974 amendments to the Act.[59] While the legislative history made it clear that agencies would have to search through computers for "records" subject to disclosure, neither the Act nor the legislative history dealt with the right of citizen access to transactional information which may reside in a pool of computer data rather than the computer equivalent of a manual record file and which would require new software programming or complex computer manipulations to make it available in ways responsive to citizen requests.

Westin's worry that the public's failure to develop citizen access policy for computerized data might pose "great danger in the future" has even greater resonance today.[60] Citizens concerned about health and safety and other public matters are discovering that the computer can become a "black hole" for contested public information. Here are some recent illustrations of this dangerous development.

Recently, Public Citizen filed an FOIA lawsuit against the Occupational Safety and Health Administration (OSHA) to challenge its withholding of public information on grounds that it would require reprogramming to access it.[61] Public Citizen describes several instances in which citizens have sought records from regional offices of the OSHA relating to such matters as inspection data on companies within a certain geographic region only to be informed that the documents no longer existed in published form or if they do, are more readily retrieved from OSHA's central computers operated by OSHA's Office of Management Data Systems (OMBDS).[62]

OMBDS has taken the position that to access the information would require it to "reprogram" its computers. Because federal agencies interpret "reprogramming" to mean the "creation" of a new record and that the creation of new records is not required under FOIA,[63] OMBDS has told these requesters that they must "pay the computer programming costs which often run into hundreds and even thousands of dollars."[64] If the document existed in published form, it would not be a new record and the requester would be entitled to a fee waiver. Public Citizen is litigating the issue of whether or not this reprogramming is a reasonable search within the meaning of FOIA and thus required to be conducted without cost to the requester.

The critical public access issue is posed by OSHA's acknowledgement that "[w]here information is sought by occupational hazard or subject matter investigation...information cannot always be produced with existing agency programs..."[65] The public policy question that must be resolved is whether OSHA, or any other government agency, can "turn its computer system into a black hole for information that would otherwise be accessible under the FOIA."[66]

Recently, officials at the Department of Energy denied the existence of public information on similar grounds. The National Security Archive, a public interest group, learned that the Department of Energy(DOE) maintains a series of reports on microfiche and requires recipients to "agree to limit access...only to those persons and organizations authorized to receive them."[67] The Archive filed a FOIA request for the list on the grounds that this was public information subject to the Freedom of Information Act.[68] DOE responded that "there is no list that covers the items."[69]

As the National Security Archive pressed its case, it turned out that the "limited access list" could be produced but not without reprogramming DOE computers to retrieve it. On appeal, the Department of Energy's Office of Hearings and Appeals held in favor of the National Security Archive and ordered the list produced on the grounds that the reprogramming was a reasonable search under FOIA.[70] Nevertheless, the troubling issue is the initial "no record" response to the Archive's request. Unless computer programming issues are resolved by the courts or by law, this can become a common agency response to requests for information under the FOIA in the computer era and signals the emergence of a new form of government secrecy.[71]

Government Secrecy and Electronic Data

While citizens have always understood the power of the government to use computers as a tool of analysis and query, only recently have some outside the business and scientific community come to realize that the ability to analyze electronic public data is within their own capabilities. Owning inexpensive yet powerful personal computers and complex search software programs, these new computer age investigators and government "watchdogs" are requesting access to electronic public data from the government to monitor and investigate government decision-making. For example, Professor Susan Long, Director of the Center for Tax Studies at the University of Syracuse and David Burnham, an investigative reporter, are seeking to establish an institution to gather important government transactional electronic data to study government operations and to make both their analyses and the data available to other reporters, researchers, and citizens interested in doing computer studies of government decision-making.[72]

Without an established legal right of access to computerized public information, these efforts to obtain computerized transactional information to do complex and unprecedented studies of government may be compromised. Federal officials, resistant to the idea of citizens using computers to probe the inner workings of government, have fought diligently to block citizen access to computerized information.[73]

Professor Long has had to litigate several cases with the government to win access under the FOIA to computerized "transactional information" from the IRS. In 1979 she won an important case which gave her access to the IRS computer program which determines who will be audited.[74] Using the computer tapes for analytical purposes, Professor Long has conducted studies which demonstrate, for example, that the mathematical formula which the IRS uses to select returns most needing audit does a poor job. In another study, she used computer analysis to show that citizens in one part of the country are more likely to be audited than in another.[75]

In a recent case, however, where Professor Long sought computer data of IRS return information stripped of personal identifiers to protect privacy, the government won a Ninth Circuit Court decision denying her access to the computer data. The case was decided in part on the Court's acceptance of the government's contention that the request for the data without personal identifiers to protect citizen privacy was a reformulation of the information and was thus the "creation" of a new agency record which is not required to be disclosed under the FOIA.[76] Assuming that privacy rights could be protected, the only logical reason (in addition to the usual refrain of government that it would be costly and time-consuming) why the government fought the case is its fear of what citizens might be able to learn about government from using and manipulating computerized data.

The federal government's recognition of the power of computers to delve into the public business and its fear of public access to sensitive computerized information is best exemplified by its recent effort to restrict public access to "unclassified but sensitive" computer data to protect national security and other federal interests. Some proposals to restrict access to this data were based on the assumption that the public has no right to the electronic version of government data.

In September 1984 President Reagan issued a secret National Security Decision Directive 145 (NSDD 145) giving the Department of Defense government-wide responsibility over protecting telecommunications and computer security.[77] In 1985 a DOD official testified that the genesis of NSDD 145 was the recognition that

> [v]irtually every aspect of Government and private information is readily available to our adversaries---unfriendly governments and international terrorist organizations are finding easy pickings in the flood of unprotected telecommunications and automated data processing information afloat in this country."[78]

That same official, in a interview with the Washington Post, stated that the government was concerned about more than what our "adversaries" might be doing with computer data.

> I'm very concerned about what people are doing--and not just the Soviets. If that means putting a monitor on Nexis-type systems, then I'm for it. The question is how do you do it technically without unnecessary interference.[79]

Pursuant to NSDD 145, the government issued a National

Telecommunications and Information Systems Security Policy which defined "unclassified sensitive information" broadly to include:

> information the disclosure, loss, misuse of which could adversely affect national security or other Federal Governmental interests. National security interests are those unclassified matters that relate to the national defense or the foreign relations of the U.S. Government. Other government interests are those related, but not limited to the wide range of government or government-derived economic, human, financial, industrial, agricultural, technological, and law enforcement information, as well as the privacy or confidentiality of personal or commercial proprietary information provided to the U.S. Government by its citizens.[80]

At the same time, DOD officials announced that to limit foreigners and citizens from using computers to delve into this information in ways which might adversely affect federal interests, they were not only considering monitoring who uses government and commercial computer systems but

> limiting the availability of on-line data in government databases; placing selective limits on who may access government databases; refusing to release or sell... [some]...data in electronic form; licensing government database information subject to restrictions on access or further dissemination; contracting with private database companies to provide database services subject to restrictions on access or further dissemination;...[and]...reclassifying data already disseminated to private data vendors...[81]

Congress and a broad public interest and information industry coalition roundly condemned NSDD 145 and DOD's plans as a threat to the free flow of information. As a consequence, the policy directive defining unclassified sensitive information was rescinded[82] and legislation was passed to restrict DOD's authority to set computer security policy for unclassified data systems.[83] The government has also retreated from implementing the proposals to limit access to computer data.

Nevertheless, the government at some future time might again claim it has authority to impose such access restrictions. For example, it might try to take sensitive technical database tapes off the shelf of the National Technical Information Center or use licensing schemes to restrict the usage of public computerized data---exercising what amounts to _defacto_ copyright controls over public information.[84] It could base these actions on the case law which suggests that electronic data is exempt from the FOIA or that the public is not entitled to data in electronic form if a hard copy is available.

In fact, the Department of Commerce today attempts to limit through contractual arrangements the sale of database services to companies likely to transfer the information to any foreign third party[85] and the National Library of Medicine offers public information databases to the public under licensing restrictions similar to those used for copyrighted materials.[86]

With the government acting as if it owned public electronic data and with citizens having no established legal right to that data, the ability of citizens to obtain and use electronic information for analytical purposes which the government thinks might harm some federal interest or prove embarrassing to an agency cannot be taken for granted today.

## V. Democratizing Access to Electronic Public Information: The Environmental Protection Agency's Toxic Release Database

The ultimate case for establishing a legal right of access to electronic is to enhance the public's right to know. But since most citizens have not used on-line government databases,[87] they need concrete examples of why acquiring rights of access to electronic public information is a matter of what Tocqueville termed "self interest rightly understood." Now, for the first time a vivid demonstration is within reach. As a matter of law, the Environmental Protection Agency must soon make significant transactional information on toxic chemical emissions into the environment available to all citizens by electronic means.

This essay deals with the EPA database in considerable detail. The statute's provisions, the process EPA is following to deal with information providers and potential users of the database, and the way in which significant policy issues are being identified and resolved are important precedents for developing federal information policy in the era of electronic government. These developments are also potential guideposts for future efforts to establish rights of access to electronic public information.

## The TRI Database: The First Public Access Database

In 1986 Congress passed the Superfund Amendments and Reauthorization Act (SARA).[88] With toxic disasters like Bhopal and Love Canal in mind, Congress was determined to strengthen the power of states, localities, and citizen organizations to make the government and industry clean up toxic waste dumps and prevent future disasters. As part of SARA, Congress passed Title III, the "Emergency Planning and Community Right to Know Act of 1986."[89] Title III establishes statewide and local community emergency planning agencies and includes a number of important industrial information reporting and disclosure requirements to provide both government and citizens with information about toxic chemicals in the environment. Over 30,000 industries are required to file reports on their storage and use of over 300 toxic substances. They must state how much and in what manner these toxic substances are emitted into the environment on an annual basis.[90]

In a groundbreaking precedent for the public's right to know, the Act includes the first federal statute which requires a federal agency to collect significant public data and then disseminate it to citizens by electronic means. Pursuant to Section 11023 (j), the Environmental Protection Agency (EPA) Administrator is required to

> establish and maintain in a computer database a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunications and other means to any person on a cost reimbursable basis. [91]

While other federal databases are "accessible" to the public on a "cost reimbursable basis," the SARA Conference Report makes it clear that Congress intends EPA to develop the national toxic chemical database (now referred to as the Toxic Release Inventory or TRI Database) principally to accomplish Title III's "community right to know" objectives rather than goals of economy and efficiency. In this regard, the SARA Conference Report states that while the Administrator may charge "user fees" for accessing the database, they must not be "prohibitive." More important, like the Freedom of Information Act, the Congress encourages EPA to establish a "reduced or fee waiver" policy for certain requests which are "in the public interest."[92] To protect traditional access rights, the Conference Report states that "other means" includes "responding to reasonable requests for printouts of data for those who do not use or choose not to use computers."[93]

The Right to Know and Citizen Empowerment

An EPA official has described how the Toxic Release Inventory (TRI) Database may revolutionize the public's right to know by increasing the ability of citizens to monitor the environment and make government and industry more accountable as Congress intends. In an interview in Chemical Times and Trends, aptly titled "The Revolution Ahead: Public Information on Toxic Emissions,"[94] Charles Elkins, EPA's Director of the Office of Toxic Substances and the official in charge of implementing the TRI database, describes TRI in these terms:

> The program is quite revolutionary when you think about it. We have never had...(this)...kind of information, even here at EPA. As it is said, 'information is power.', and these data will give citizens more power over toxics in their environment...[95]
>
> Specifically, we are looking for the ability for people to sit at their computer terminals, dial up this data base from anywhere in the country, and be able to not only look at each individual emission report, but actually analyze the data. So they could ask questions like:' How many tons of carcinogens are released in the air in my community?' Or how does company X compare to the companies in its standard industrial code.[96]

As Elkins observes, the TRI Database has the potential for altering the traditional power relationships between government and citizens. In the past, citizens have had to rely on EPA for analyses of environmental problems and issues. Title III "really turns this process upside down."[97] Under Section 11023(j)

> EPA collects the data, puts it up on the computer and people analyze it any way they want to. There will be no EPA press release or 'editorial' from EPA. That's the way the statute was written, and our assistance to the community in understanding the data will have to be supplementary to this primary task."[98]

Elkins gives a vivid example of how citizens will be able to act independently of EPA by using the TRI database. Without EPA issuing a report or without making a request for data and waiting for it to be processed under The Freedom of Information Act,[99] a newspaper reporter could access the computer, make queries about a company in a particular location, sort the data in a number of ways, and create unique reports for a story. Under the headline "Local Plant Dumps Toxic Chemicals in Crystal River," the following hypothetical story could appear:

> The ABC Manufacturing Co. in downtown River City dumped more than 200 tons of toxic chemicals, including several cancer-causing substances, into the Crystal River last year according to reports made public yesterday by the U.S. Environmental Protection Agency. The river is the major source of drinking water for River City and most of surrounding Utopia County. The reports also show that ABC, a leading producer of chrome-plated industrial widgets, released nearly 50 tons of toxics into the River City's air in 1987, and sent another 300 tons of potentially poisonous material to the Utopia waste-treatment plant for disposal. Last year, the plant reported to EPA that it stores more than 1,000 tons of hazardous substances within a few blocks of River City High School. On three different occasions over the past six months, plant accidents have released clouds of hazardous and toxic chemicals into the surrounding neighborhoods.[100]

A citizen activist could do the same kind of computer analysis and develop a report on "Crystal River" and release it at a press conference. A public interest group could then use it for purposes of grassroots organizing, protest, or litigation. On the other hand, chemical companies and other industrial firms may produce computer reports to prove that they are obeying the law by emitting safe quantities of toxic chemicals into the environment.[101]

If the TRI Database works as described by EPA, it has enormous precedential value for charting the future course of the public's right-to-know in the electronic age. If it empowers citizens concerned about toxic waste, a public demand may develop to replicate the TRI Database for the purpose of disseminating other important environmental data.

The public might also demand similar databases at other agencies. Instead of pursuing "hard copy" versions of OSHA documents, as Public Citizen is doing under the FOIA today, citizens might work to pass a database statute modeled after TRI to cover computer and hard copy requests for data at OSHA. Soon, civil rights organizations would want to gain electronic access to "transactional data" at the Justice Department and Department of Education to study whether and how civil rights laws are being enforced. Civil liberties groups would want to access computer data from the Justice Department to study how prosecutors are using the federal preventive detention statute in different parts of the country. Conservative groups might want computerized access to federal housing and employment training grants "to demonstrate" that they benefit "liberal elites" rather than the poor or that these programs are not cost effective compared to market solutions.

**Public Access Policy Issues Posed by the TRI Database**

Before any of these demands for electronic public information can be met, significant policy issues need to be resolved. As EPA's effort to develop the TRI database demonstrates, making a demand for access to electronic public information is only the first step towards making computer data readily and easily accessible to citizens.

Over the last year and a half, EPA's Office of Toxic Substances has been working to resolve a number of significant information technology policy and technical issues posed by the TRI Database. Without precedent in federal law or practice, EPA is attempting to determine how to satisfy the congressional mandate which requires that the TRI database "shall...[be] accessible by computer telecommunications ...to any person on a cost reimbursable basis." EPA has to resolve how to develop the system within funding restraints so that it is both cost effective and accessible to citizens at rates which are not "prohibitive." EPA also has had to determine whether the government or the private sector information industry should develop the TRI database to meet goals of economy, efficiency, and public access.

**EPA's Policy Consultation Process With Potential Users**

From the outset, EPA's Office of Toxic Substances has actively sought to involve interested parties in its deliberations. It has conducted a user requirements survey,[102] issued a public report on its plans and recommendations,[103] and held a public hearing to solicit comments on its development options.[104] EPA regularly consults with environmental organizations, the Chemical Manufacturers Association, and other potential users of the TRI database to resolve conflicts and refine its system design. As a House Government Operations Committee Report on electronic dissemination systems points out, a process of this kind is essential to maximize the possibility that an electronic information system will serve both the needs of government and potential users.[105]

The involvement of the user community is also important to note. If citizens want electronic data systems to serve their needs, they must actively take part in the agency planning process.[106] Since the enactment of Title III, a coalition of environmental groups has been meeting regularly with EPA to express their views about EPA's plans.[107] Taking a lesson from the private sector information industry, the environmentalists have brought in their own technical assistance group, the Public Interest Computer Association, to better understand EPA's system specifications and to work with them and EPA to insure that the final system will better serve user needs.[108] Their involvement has been welcomed by EPA and is likely to improve the final system design.

The EPA Process for Determining How to Develop the Database

On March 4, 1988, EPA issued a "Public Report for Options to Make the Toxic Release Inventory(TRI) Database Accessible to the Public."[109] The Public Report sets out EPA's interpretation of the system requirements necessary to meet Title III's mandate that the TRI database must be "accessible...to any person." It outlines the process EPA followed to explore both government and private sector options for developing the TRI database. It sets out the factors EPA weighed in deciding which option to choose and what level of service to provide. Familiarity with the EPA Public Report is fundamental both to understand how the EPA plans to implement the TRI database and to consider whether EPA's decision-making process and recommendations embody sound public policy for the electronic dissemination of public information.

The Public Report states that EPA explored the feasibility of meeting system or user requirements at three levels of service. As EPA outlines in the Report:

> System requirements were considered in three tiers, i.e. Tiers A, B, and C, where Tier A requirements represent the minimum requirements mandated by legislation and/or specified by EPA, and Tier B and C requirements represent optional enhanced characteristics which are desirable for the TRI public data base to enhance data utility and analysis and display characteristics.[110]

In common parlance, these levels of service may be described as basic, enhanced, and user-friendly. At Tier A, the system would be "accessible," have "aggregation capabilities", and include "search and retrieval" software and minimum "user support." At Tier B users would have in addition "statistical analysis software" and access to "complementary files" for doing more complex analyses. At Tier C, the system would have "menu driven screens," "mapping capabilities," and "crosslinks to EPA data bases."[111]

After establishing the system requirements, EPA attempted to determine the most efficient and cost-effective way to develop the TRI Database. As required by federal law, it considered using other current government information system deigns (for example, the EDGAR system) After determining that existent systems were either too expensive or inappropriate for the TRI Database, the EPA went on to explore four options.[112]

The EPA considered contracting with the private sector by placing a notice of system requirements in Commerce Business Daily and entered into discussions with two commercial information providers. Second, EPA explored developing the system through Purdue University, a non-profit institution. Third, EPA considered the feasibility of establishing its own electronic Clearinghouse. Finally, it examined the possibility of setting up the system through an interagency agreement with the National Library of Medicine.[113]

After obtaining tentative bids from these entities, EPA weighed which option to choose in terms of four factors. EPA considered: (1) cost to the government, (2) cost to the user, (3) the risk of delays or problems in contracting and implementation, and (4) conformance to system requirements.[114]

After examining the options and what they would cost to meet system requirements at the three levels of service, the Public

Report states that EPA's recommendation is to establish an intergovernmental agency relationship with the National Library of Medicine(NLM). Initially, NLM will provide service essentially at the Tier A or basic level. At the same time, the EPA will make the database tape available through the Commerce Department's National Technical Information Service (NTIS) to "encourage" the private sector to develop alternative TRI database systems.[115]

The Public Report summarizes EPA's reasons for making this recommendation as follows:

> Tier A has been selected because of funding restraints. The EPA planned approach has been to select the...[interagency agreement with the National Library of Medicine]...which has been determined to be the option which most closely provides the best balance of all evaluation criteria established for this analysis. The ...[National Library of Medicine]... option has the potential of providing an 'enhanced system' at the partial Tier B level for the initial implementation, while being funded at the Tier A level.[116]

**EPA's Commitment to an Enhanced User-friendly System**

EPA's recommendation to develop the TRI database through the National Library of Medicine (NLM) establishes EPA's fundamental commitment to develop the TRI database as a user-friendly system accessible by most citizens. EPA chose NLM because, compared to other system options, NLM permits EPA to provide "enhanced" service to users at the outset despite EPA's funding constraints. Unlike the EPA Clearinghouse or private vendor options, NLM will provide users of the initial system with access to "complementary files" of "health and environmental effects data" and more user training and support. Moreover, in EPA's judgment, the NLM system is the most cost-effective option for achieving a fully user-friendly system with "menu driven screens" and "mapping capabilities" in the shortest period of time.[117]

Given the complexity of this new technology and citizens' lack of familiarity with it, EPA's commitment to develop an enhanced or user-friendly database is of critical importance. While the computer expert can use sophisticated search software to conduct database queries, most citizens need "value added" enhancements such as "menu driven screens" and prompts to help them navigate through electronic data.

**Resolving System Requirements Issues**

While the Public Report indicates EPA's intent to develop a user-friendly system, it does not provide sufficient detail to permit the public to make an informed judgement on whether the system will be easily accessible by the public when it is operational. Although EPA is proceeding with an interagency agreement with the National Library of Medicine to implement the TRI Database, neither the Public Report nor EPA's preliminary EPA/NLM interagency agreement[118] contain sufficient information or system design specificity for the public to determine whether EPA's recommendations are cost-justified or reasonable. Because system requirements have not been worked out, neither the public nor EPA is in a position to judge whether the NLM system will meet either public needs or EPA's expectations.

For the general public, the fundamental issue is whether the TRI database, when it is up and running, will function in the manner described by EPA. Will an environmentalist, local government official, or newspaper reporter be able to "dial up" the National Library of Medicine and query the database in the way described by the Director of the Office of Toxic Substances? Will they be able to ask and get answers to questions such as "How many tons of carcinogens are released in the air in my community? Or How does company X compare to the companies in its standard industrial code?"[119] The Public Report, instead of answering such public concerns, is written in generalities. NLM will provide the "best benefit for user requirements" but there is no specificity about what NLM will provide.

The generality of EPA's Public Report does not permit the public to determine the soundness of EPA's recommendations on such a fundamental issue as whether or not EPA can implement a user-friendly system within current budgetary constraints. As already mentioned, the Public Report states that because of "funding restraints," EPA will implement the National Library of Medicine TRI database system essentially at the Tier A level of service.[120] But Tier A is by no means user-friendly.

In fact, it may be virtually useless for most citizens. At the Tier A level of service, citizens may "access" the data on 30,000 firms reporting on over 300 toxics but only with search and retrieval software based on "Boolean logic (ie. AND, OR, NOT),"[121] and without menu driven screens, cross links to other data files, and much of any user support (i.e. EPA plans a telephone hotline to answer user questions from around the country).[122]As EPA concedes in its draft interagency agreement:

> It is recognized by both the EPA and the NLM that two levels of users (novice and sophisticated) will want to access the TRI database. While the current user training services and search guides offer excellent assistance to searchers comfortable with searching online systems, additional training which addresses the novice or new searcher will need to be developed.[123]

Yet EPA's justification for limiting the system in this way because of budgetary constraints is not clearly supported by its cost estimates. According to the Public Report's summary of costs, the National Library of Medicine option at Tier A is estimated to cost $437,686 for the first year. At Tier C the cost would be $742,686, a difference of only $305,000. Averaged over a five year period, the cost difference between Tier A and a user-friendly system is estimated to be only $85,000 per year.[124] In fact, developing a user-friendly system from the outset may even prove less costly because it will increase use of the system by making it more accessible to the public.[125]

Given the fact that Congress has appropriated $10 million to implement Title III,[126] and that only a fraction of this total may be necessary to make the computer system accessible by most citizens, EPA's justification for funding only Tier A service appears unreasonable, particularly in view of its commitment to a user-friendly system, the intent of Congress in establishing the database, and EPA's own concerns about providing toxic chemical data without giving citizens the capability of analyzing it.

In enacting the "Community Right to Know Act" which includes the requirement to establish the TRI Database, Congress wanted local governments, planning groups, and community leaders and environmentalists to know about toxic dangers in their communities without having to rely on EPA reports.[127] The database, as the head of the Office of Toxic Substances stated, is intended to make citizens less dependent on EPA's published reports and analyses.[128] Unless citizens can use the database, they will continue to be dependent on EPA for data.

EPA has also indicated that "value-added" enhancements to the TRI Database are necessary to resolve its own concerns. EPA officials worry that citizens may misinterpret the data by translating information about toxic "emissions" into the atmosphere directly into an indication of "exposure" levels. In fact large quantities of toxic chemicals, if handled appropriately, may not threaten the environment. To help citizens understand the data, the head of the Office of Toxic Substances has written about the need to add analytic software to the database (e.g. GEMS, an analytic modeling tool for projecting exposure levels).[129]

Even if the Public Report stated an intention to provide "menu driven screens" or "substantial user support and training," the public would not be able to judge whether the system will be user-friendly. As EPA has not specified what kinds of menu screens it has ruled out at this initial phase, the public would be in no better position to know how it would benefit if EPA spent the additional funds to add such an enhancement unless EPA specifies what the menus would do. A "menu-driven screen" can range from "WELCOME TO THE TRI DATABASE PLEASE READ THE DBASE

THREE MANUAL AND PROCEED" to a series of query screens which assist a user to make a sophisticated search. Similarly, while the draft interagency agreement contemplates NLM providing user training, the agreement does not specify whether NLM will conduct seminars or prepare manuals or both.

The failure to establish detailed system requirements not only places the public at a disadvantage in understanding how the TRI Database will function. EPA has also failed to give NLM sufficient information for it to know what software to purchase or what programming needs to be done. If the TRI Database does not work as EPA contemplates, EPA's failure to specify system requirements may make it impossible to hold NLM accountable.

EPA is exploring whether further enhancements are feasible and attempting to clarify system requirements. This includes specifications covering such matters as how TRI data will be maintained, how user accounts will be administered, software design, query or menu screens, help screens, gateways to other databases, and training and technical support functions.[130] Policy matters such as "fee waiver" standards will also need to be addressed.[131] EPA is consulting with potential users to work through the issues. Environmental groups, assisted by their technical assistance team, are working both with EPA and NLM to refine the draft interagency agreement.

Public Access and Information Policy

The Environmental Protection Agency's potential development of a government funded user-friendly TRI Database has important implications for evolving public policy on government electronic information systems. While choosing the National Library of Medicine, a government agency, to establish an "enhanced" electronic database, EPA has demonstrated that public access rights can be achieved without sacrificing other important public policy objectives. In particular it is possible to build a public access system while giving the private information industry an opportunity to develop the system and insuring that the government does not gain monopoly control over electronic data.

At the same time, EPA's reason for choosing NLM rather than EPA itself or a private sector firm to develop the TRI Database suggests that the current debate over whether the government or the private sector should provide "value-added" systems needs to be reformulated. The principal issue is not whether one sector or the other should develop "value-added" systems but which can do so most effectively in particular circumstances consistent with the goal of maintaining a diversity of information sources.

## Public Access Systems and the Private Sector

Under OMB Circular A-130, government agencies are required to place "maximum feasible reliance" on the private sector in developing government electronic dissemination systems to avoid duplication and to insure that systems are developed in the most cost-effective manner. It is important to keep the government from developing databases which the private sector may establish more efficiently and effectively.[132]

Another goal of federal information management policy is to insure a diversity of information sources.[133] The growth of the private sector information industry is important for the economy[134] and a diversity of information sources is essential to insure the free flow of information. Unfair government competition may stifle the private sector and create government monopolies over information. Some contend that this policy objective can be accomplished in most circumstances by limiting the government to developing "basic" electronic databases and leaving all "value-added" services to the private sector.[135]

Fully consistent with Circular A-130, EPA gave the private sector information industry an opportunity to state their interest in developing the TRI Database by placing a notice of the system and EPA's requirements in Commerce Business Daily.[136] While two commercial firms came forward, neither was particularly enthusiastic about the TRI database.

As the Public Report suggests, their cost estimates were very tentative and higher than those projected by the National Library of Medicine and Purdue University. In fact, there is good reason to believe that the commercial firms did not believe there was sufficient government funding or potential market demand to get involved.[137]

However, the position that a diversity of information sources can only be assured if the government is limited to providing "basic" service needs to be reexamined in light of the TRI Database. Assuming that users of the TRI database or similar government systems need a "value added" or user-friendly system, how can this be accomplished except by government initiative if the private sector does not want to compete or sees no commercial advantage in a particular database?

Since the absence of a commercial market may apply to many potential public databases relating to matters of health, safety, and welfare, the government should be able to develop these databases with "value-added" services without having to wait for a market to develop. Nor should the government have to establish that there is no likelihood that the private sector may be interested before proceeding to establish important electronic databases of government information.

Following the EPA example, the government should only have to give the private sector information providers an opportunity to develop the system and then resolve the diversity of sources issue by making the basic database available for private development. As already mentioned, EPA will provide the datatape to NTIS for sale to the private sector at cost in order to "encourage" the private sector to develop other versions of the TRI Database.

The public interest is best served by this arrangement. If EPA produces a database that does not work well, there is the potential for private development of the TRI Database. In fact, other sources of TRI data should be encouraged. When sensitive data is involved, such as toxic chemical information, the government may attempt to clamp down on public access to the information. For example, the government could claim more information should be unavailable because of the need to protect trade secret information. If this occurs, the more who have a stake in the information, the better the chances are for protecting the public's rights. As discussed earlier, when the government tried to limit public access to "unclassified but sensitive" computer data, a powerful coalition of public interest groups and private sector information providers united to block the government's effort.[138] The best defense against government monopolization of information is through strong broad-based coalitions motivated by a number of "self interests rightly understood."

### The Government Role As Electronic Publisher

While the government should be able to develop "value-added" systems, the EPA experience challenges the assumption that the government should become the principal provider of electronic public information.

Although EPA chose another government agency to develop the TRI Database, EPA did so after rejecting the option of establishing its own electronic clearinghouse for toxic data because it would have been the most costly and least useful system to develop. This suggests that in some cases, relying on the government to develop a system may not resolve public access needs. As in the case of relying on the private sector for "value-added" services, looking to the government to do so depends on the particular circumstances. There is no hard rule that resolves how to best disseminate particular electronic information to the public.

According to EPA's Public Report, creating an EPA electronic clearinghouse would have been the option which would have cost both government and users the most. It also posed the greatest potential for delay and ultimately would prove to be the least user-friendly. A principal reason is that EPA has no experience or support structure for disseminating electronic information to the public since electronic dissemination has never been a goal of federal policy. As EPA states in the Public Report:

> The EPA Clearinghouse is at a major disadvantage in regard to user support services, because support infrastructures for public data base access do not currently exist within the Agency and will have to be established for this option.[139]

Never having provided citizen access to its data systems, EPA would have had to contract with commercial firms for hardware, software, and to establish a user support structure. The problem is that this option would cost the most and possibly delay the implementation of the TRI database.

> Contract vehicles exist for most of the hardware/software proposed for the EPA Clearinghouse. However, acquisition of equipment, preparation of the facility, and development of a support group will be time consuming and has the potential to delay...[implementation].[140]

If EPA built the initial Tier A basic system, as a consequence of its internal systems design, the agency would not be able to provide easy access to complementary files. For example, "gateways" would have to be established so that users could access TOXLINE and CHEMLINE at the National Library of Medicine and users would not be able to use them simultaneously with the TRI database. Because other relevant EPA files such as the "National Pollutant Discharge Elimination System (NPDES)" and files on "permits, air releases, etc."[141] are not networked within EPA, extensive costs would have to be incurred to enhance the system.

> It also will require costly and extensive software development to provide access to complementary health and environmental effects files and to crosslink to other EPA files.[142]

With the clearinghouse ruled out and the commercial bids too high, EPA chose the National Library of Medicine option because NLM "has had several years of experience providing user support, training, and marketing for a user community of primary health care professionals"[143] and because it would cost less for users and provide them with ready access to complementary files.[144]

## VI. Summary and Policy Recommendations

Over the last two decades, the federal government has transformed public information from paper documents and data files into electronic database systems. Government information is now being disseminated to the public through government and commercial electronic dissemination systems. Yet there has been no serious public policy debate or concerted effort to resolve electronic information policy issues with citizen access rights as a core concern.

It is of vital importance to initiate this policy debate today. As citizens ply the government for information, they are encountering new access roadblocks resulting from the failure to design and program government computer systems to access information which must be disclosed under the Freedom of Information Act. As citizens come to recognize the value of achieving access to electronic information, they find that they have no clear legal right to the electronic version of public data. At the same time, many citizens can neither afford nor have the skills to use most electronic public information being disseminated by the government today.

The debate is timely. Public demand for access to electronic government information is likely to increase significantly in the next several years as the "PC Revolution" enters a new stage. Already, a growing number of citizens and organizations are starting to use the computer to communicate, analyze, and disseminate information. Organizations are establishing electronic bulletin boards and electronic information dissemination systems.[145] Non-profit communications networks are introducing organizations to on-line communications.[146] New electronic systems such as Reference Point will soon make it easy for groups which have only begun to use computers to communicate and disseminate information to the public through electronic means.[147] Public access to databases will soon be facilitated when the telephone system becomes a "gateway" for electronic information services.[148] As these developments expand the capability to use databases, more citizens will want to access electronic public information.

### Initiating the Debate

The first order of business is to initiate a public inquiry and debate on access to electronic information.[149] The Congress needs to explore the impact on the public's right to know of the federal government's own creation and use of electronic public information for internal governmental processes, as well as the public access implications of government electronic collection and dissemination of information. The Subcommittee on Information of the House Government Operations Committee has held initial hearings on the issue and plans further hearings in the next Congress.[150] The Senate Judiciary Subcommittee on Technology and Law is another appropriate forum. Both Subcommittees have jurisdiction over the Freedom of Information Act. The hearings should identify legal, policy, and technical-practical barriers to citizen access to electronic public information.

**Policy Recommendations**

The policy debate should focus on both near and long-term policies and strategies for establishing public rights of access to electronic public information. A series of legislative initiatives need to be considered by both the Congress and Executive Branch.

**A Right of Access to Electronic Information**

Congress should establish a right of access to electronic information under the Freedom of Information Act. In doing so, Congress will have to resolve a number of complex issues beyond the scope of this essay. The Congress must grapple with the definition of an agency record, reasonable search requirements, fee waiver policy, and the distinction between providing information and performing analysis of information. It must also insure that access rights are consistent with other FOIA goals such as protecting citizen privacy. As Congress works on these issues, some initial policy initiatives may be taken.

> First, Congress could require by law that if funds are authorized or appropriated for any new internal government database system which contains public information, the system must be programmed to insure that the information is accessible pursuant to the FOIA. All agencies who plan to upgrade an existing database containing public information with appropriated monies shall be required to expend funds to reprogram the database to make public information accessible. For systems developed or upgraded pursuant to this requirement, the government shall thereafter be required to reprogram the system at government expense to satisfy a request for information subject to the FOIA.
>
> Second, Congress can establish a requirement that information which must be published or made available for copying under the FOIA without awaiting a request, such as agency missions, regulations, and decisions should be "accessible to any person by computer telecommunications on a cost-reimbursable basis" similar to the requirement for the EPA Toxic Release Inventory Database.[151]
>
> Third, Congress can amend the FOIA to provide that requesters under the FOIA may access either the printed on electronic version of information which must be disclosed under the Act.

**Public Dissemination of Electronic Information**

As the federal government develops electronic collection and dissemination systems, it must consider more than goals of economy and efficiency. Electronic dissemination systems must also serve to insure and enhance public access to information.

As discussed earlier, public access requirements may vary depending on the nature of the particular information system.

For example, providing public terminals may be sufficient for the EDGAR system dealing with security filings but wholly inadequate for EPA's Toxic Release Inventory Database. One possible solution is legislation to amend the Paperwork Reduction Act or enactment of specific legislation that would change information management resource policy in the following ways:

> First, require that federal agencies consider "adequate provision for public access" as one of the factors that must be weighed in developing information system plans in addition to factors such as avoiding duplication or looking to the private sector to develop information services and products.
>
> Second, require federal agencies to actively involve potential commercial and non-profit institutions in commenting on agency information system plans both through notice in the Federal Register but also by actively seeking their participation in agency planning deliberations as EPA has done with respect to the TRI Database.
>
> Third, establish system requirements that mandate contractors to submit plans for providing access to non-commercial users such as educational institutions, depository libraries, and other non-profits at reduced rates.

Public access requirements for specific database systems would be established through the give-and-take between federal officials, information providers, potential users, and the Congress.

In addition, enhancing citizen access to electronic public information can be accomplished by also considering other initiatives.

> First, the federal government should be required to establish an electronic and hardcopy index of all public databases which describe their contents, how they may be accessed, what they cost, and what user supports are available. It should be updated annually. The electronic index should be available through the Government Printing Office, the Depository Library

> Program, and NTIS.
>
> Second, the government should be encouraged to establish government-wide open network architecture requirements and standard formats to make databases more easily accessible to citizens.
>
> Third, efforts should be made to develop "electronic pilot projects" through the Depository Library Program. The Joint Committee on Printing, the library associations, and the information industry need to explore "new partnerships."[152]

Finally, legislation can be crafted to achieve public access goals by establishing electronic databases to disseminate data on matters of health, safety, welfare, education, and other matters of public importance based on the EPA TRI Database model.

## VII. Conclusion

These policy objectives will not be easily achieved and some will need to be recast and reformulated after public debate. But if this paper stimulates debate and interest in this important issue, it will have achieved its purpose. In any event, processes are underway which will eventually make citizens users of electronic public information.

At the end of this scenario, one can envision an "Electronic Freedom of Information Act." Citizens dial up the federal FOIA database which has an index of agencies and subjects. The citizen chooses an agency and the computer provides a "gateway" to the agency's FOIA database. Using a user-friendly menu and screen prompts, a citizen should be able to access files already mandated to be made public pursuant to the FOIA. A citizen may also make an electronic request for other public information and "files" electronically maintained by an agency. Within a statutorily specified time, the agency responds to the request by electronic mail to inform the requester that the request is granted and asks whether the requester wants the information delivered electronically or in hardcopy form by regular mail or fax. The citizen responds via an electronic bulletin board that he or she wants the information electronically and enters a credit card number to have an account charged for the FOIA search and reproduction fees. The information is transmitted to the requester's computer.

The citizen may also use the Electronic FOIA at public libraries and through commercial and non-profit organizations who have used the electronic FOIA to make special collections of information on national security issues, childrens' rights, or on FCC or FDA regulatory matters or have incorporated "value added" enhancements which permit basic information to be analyzed and compared in more complex ways.

This electronic information revolution may be in the future but it is not farfetched as the TRI Database exemplifies. Moreover, policy makers are already considering this revolutionary transformation. As the Chairman of the House Government Operations Subcommittee on Information recently stated:

> [T]he new technology is putting considerable pressure on the laws that were passed to regulate Government information policy when information only existed on paper or other hard copy formats. There may soon be a need to recognize the consequences of the new technology. For example, there may be a need to pass an Electronic Freedom of Information Act in order to make certain that the benefits of broad disclosure of

Government information are not lost as Government information becomes electronic.[153]

## NOTES

1. U.S. Congress, Office of Technology Assessment, Federal Government Information Technology: Management, Security, and Congressional Oversight. (Washington, D.C. GPO: 1986), 28.

2. Ibid. ,142-43.

3. Information USA, The Federal Database Finder: A Directory of Free and Fee-Based Databases & Files Available from the Federal Government, 2nd. ed. (Maryland: Information USA, Inc., 1987), 1.

4. Ibid. chap. 1 passim; OTA, Federal Government Information Technology., 143-146.

5. Information USA, The Federal Database Finder, 1-3. In Fiscal year 1985, there were 1,022 agreements by federal agencies for use of 16 major commercial online retrieval systems. The most used services were Dialog, BRS, Lexis/Nexis, Orbit, and Westlaw. Alan F. Westin, Reference Point Prospectus (Unpublished September 1987).

6. Information USA, The Federal Database Finder, passim.

7. U.S. Congress, House. Committee on Government Operations. Electronic Collection and Dissemination of Information By Federal Agencies: A Policy Overview. Report. No. 99-560, 99th Cong., 2nd sess., 1986. (Washington, D.C.:GPO, 1986)

8. Ibid.,passim.

9. Ibid., 3.

10. OTA, Federal Government Information Technology, 142-143.

11. U.S. Congress, Electronic Collection and Dissemination., 47-52.

12. Congress passed legislation to authorize EDGAR and establish system requirements and reporting procedures. Public Law 100-181, Sec.101 (1987) (adding Sec.35A to the Security And Exchange Act of 1934). See U.S. Congress, House, Committee on Energy and Commerce, Securities and Exchange Commission Authorization Act of 1987. House Rep. 100-296, 100th Cong., 1st Sess. (Washington, D.C. GPO: 1987).

13. See the floor statement of Rep. Glenn English, Chairman of the House Subcommittee on Information of the House Government Operations Committee during debate on H.R. 2600. 133 Congressional Record, H7415 (Sept. 10, 1987) (daily ed.).

14. United States Securities and Exchange Commission, SEC Request for Proposals For an Operational Edgar System. Solicitation No. SEC HQ1-86-R-0637 (Washington D.C. SEC: May 7, 1986) C-110-C-112.

15. Ibid.

16. U.S. Congress, House Report on Electronic Collection and Dissemination., 62.

17. For a detailed discussion of the Environmental Protection Agency and public access issues, see pp. ______below.

18. Peter Hernon and Charles R. McClure, Federal Information Policies in the 1980's:Conflicts and Issues. (New Jersey: Ablex Publishing Co. 1987), 179-83.

19. Ibid.

20. U.S. Congress, House Report on Electronic Collection and Dissemination., 13-15, 62-64. Information USA, The Federal Database Finder, passim.

21. Information USA, The Federal Database Finder, passim.

22. OTA, Federal Government Information Technology, 152-153.

23. The average cost of government information databases provided through DIALOG by the private sector is $93.26 while databases provided directly to DIALOG by the collecting agencies costs $45.70 per connect hour. Statement of Dr. Harold B. Shill, Chair Legislation Assembly American Library Association, Hearings on Federal Information Policy before the Subcommittee on Science, Research, and Technology of the House Committee on Science, Space, and Technology, July 14, 1987.

24. Support for the "public's right to know" is a widely shared principal. However, in reality, access rights have not been won easily. The Freedom of Information Act was passed in 1966 but was undermined by agency interpretations. The 1974 Amendments required an override of a veto by President Gerald Ford to enact into law. The Reagan Administration has devoted considerable time and effort to scale back citizen access rights under the FOIA. Peter Hernon and Charles R. McClure, Federal Information Policies.,52-66; Allan Adler, ed., Litigation Under the Federal Freedom of Information Act and Privacy Act. 13th ed. (American Civil Liberties Union Foundation 1988),4-6; Eve Pell, The Big

25. 5 U.S.C. Sec.552 (1982). The Act was partly amended in 1986 as part of the Anti-Drug Abuse Act of 1986. Freedom of Information Act of 1986, Pub. L. No. 99-570,, Title I, Subtitle N, Sec. 1801-1804, U.S. Code Cong. & Ad. News (100 stat.)(amending 5 U.S.C. Sec. 552).

26. Senate Report No. 93-854, 93rd Cong., 2nd Sess. 12 (1974).

27. 44 U.S.C. Sections 3501-3520 (Supp. 1986).

28. 44 U.S.C. Sec. 3501. (Supp. 1986)

29. Ibid.

30. 44 U.S.C. Sec. 3504 (Supp. 1986)

31. Office of Management and Budget, Management of Federal Information Resources: Circular No. A-130, 50 Federal Register 52730-52738 (December 24, 1985)

32. Ibid., 52736.

33. Circular A-130 has been used by the Reagan Administration to justify severe cutbacks in the availability of public information. See Donna Demac, "Keeping the Citizens Uninformed," in Government Information: An Endangered Resource of the Electronic Age (Special Libraries Association 1986) 25-41; John Shattuck and Muriel Morisey, "The Dangers of Information Control," Technology Review (April 1986), 70-72; OMB Watch, Paperwork Reduction: The Quick Fix of 1986 (OMB Watch November 1986); American Library Association, Less Access to Less Information by and About the U.S. Government: A 1981-1987 Chronology (ALA 1988). Thus, one is tempted to argue that its restrictive policies on electronic data dissemination are cut from the same cloth. Unfortunately, here the Administration is simply carrying out the dictates of current law. Citizens have not demanded nor won rights of access to electronic data.

34. OMB, Circular A-130. Sec. 6(f), 52735.

35. Ibid. Sec. 7(g), 52736.

36. See Yeager v. Drug Enforcement Administration, 678 F.2d 315 (D.C. Cir. 1982)

37. See SDC Development Corp. v. Mathews, 542 F.2d 1116 (9th Cir.1976).

38. Dismukes v. Interior, 603 F. Supp. 760 (D.D.C. 1984); See also Yeager v. Drug Enforcement Administration, 676 F.2d 315 (D.C. Cir. 1982).

39. OMB, Circular A-110, Sec. 8(a)(7), 50 Federal Register, 52736.

40. 42 U.S.C. 11023 (j) (Supp. 1988). A discussion of this public access electronic database appears at pages below.

41. OMB Circular A-110, 50 Federal Register, 52547 (Appendix IV).

42. Ibid., 52736.

43. Ibid.

44. Peter Hernon and Charles R. McClure, Federal Information Policies., 164-194. American Library Association Less to Less Information by and About the U.S. Government: A 1981-1987 Chronology. (ALA Washington Office Feb. 1988), passim.

45. OMB, Circular A-110, 52748.

46. Ibid.

47. Ibid., 52748. (emp. sup.)

48. Ibid., 52735.

49. 5 U.S.C. 552 (b) sets out nine exemptions for matters such as classified national security information, trade secrets, and personal information which would violate personal privacy. If the government contends and the courts agree that information sought under the FOIA is within one of these exemptions, the information is not disclosed. See Allan Adler ed., Litigation under the Freedom of Information Act., passim.

50. New communications and computer technologies were so identified in a seminal book on the need to rationalize the new technologies with First Amendment values. Ithiel de Sola Pool, Technologies of Freedom (Massachusetts: Belknap Press 1983).

51. Alan F Westin, "The Technology of Secrecy," in Steven Gillers and Norman Dorsen, eds., None of Your Business. (New York: Viking Press 1974).

52. Ibid.

53. Ibid., 305. (emp. supp.).

54. Ibid., 311.

55. Ibid., 311.

56. Ibid., 312.

57. Ibid., 312.

58. Ibid., 317.

59. Ibid., 319-320

60. See also Alan F. Westin, "Computers and the Public's Right to Know," in Advances in Computers Volume 17 (Academic Press 1978).

61. Public Citizen,et.al. v. Occupational Health and Safety Administration (Civil Action No. 86-0705 U.S.D.C. District of Columbia 1988).

62. Plaintiffs' Memorandum in Opposition to Defendant's Renewed Motion To Dismiss and Motion for a Protective Order And In Support of Plaintiffs' Motion for Partial Summary Judgment, Public Citizen, et.al. v. Occupational Safety and Health Administration (Civil Action No. 86-0705 U.S.D.C. District of Columbia), Feb. 2, 1988.

63. Public Citizen cites proposed Department of Labor regulations, 29 C.F.R. Sec. 70.5 which state that "Nothing in [the FOIA] requires any agency or component to create a new record, either manually from preexisting files or through creation of a computer program, in order to fill a request for records." Ibid., 16.

64. Ibid., 3.

65. Ibid., 9.

66. Ibid., 24. Unfortunately, this is not likely to be resolved by the courts since OSHA, under the pressure of litigation, has now discovered that the data can be accessed without reprogramming.

67. National Security Achieve Request Under the Freedom of Information Act to John E. Carter Chief of FOI and Privacy Acts Office of Administrative Services United States Department of Energy (September 24, 1987).

68. Ibid.

69. Letter to Quinlan Shea, Jr., National Security Archive from Bonnie C. Carroll, Deputy Assistant Manager for Information Services Department of Energy. (October 22, 1987).

70. *Decision and Order of the Department of Energy Appeal by Petitioner National Security Archive*. (Case No. KFA-0158) (December 18, 1987).

71. The Department of Energy asked the Office of Hearings and Appeals to reconsider its decision to require reprogramming on the grounds of cost and time. *Memorandum To George B. Breznay Director Office of Hearing and Appeals Regarding Freedom of Information Act Appeal filed by the National Security Archive*. (Case No. KFA-0146. January 19,1988). The Office reaffirmed its decision. *Decision and Order of the Department of Energy Motion for Clarification* (Case Number KFA-0158 May 26, 1988).

72. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

73. Even though computerized information has no copyright, citizens have been denied requests for the electronic version of public data. *SDC Corporation v. Mathews*, 542 F.2d 1116 (9th Cir. 1976) (electronic tapes containing database of bio-medical literature are not agency records for FOIA purposes and are not available pursuant to an FOIA request). See also *Clark v. United States Department of the Treasury and W. M. Gregg*, (Civil Action No. 84-1873 U.S.D.C. Eastern D. Penn. 1986)(denial of computer data on treasury bonds even though plaintiff prepared to pay programming costs to extract data). *Letter to Honorable C. William Verity Secretary of Commerce from Rep. Glen English* (Feb. 19,1988)(requesting explanation why citizen was denied a copy of an on-line database available free from the government). *Appeal to Administrator Animal and Plant Health Inspection Service By Public Citizen on behalf of Hillel Grey*. (June 15, 1988)(FOIA appeal based on agency refusal to provide revised computer tapes similar to those which plaintiff had previously obtained from USDA because USDA had now decided these were not agency records under FOIA or would place an unreasonable burden on the agency to produce them in computerized rather than published form).

74. See e.g. *Long v. IRS*, 596 F.2d 362 (9th Cir. 1979), *cert. denied*, 446 U.S. 917 (1980).

75. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

76. *Long v. IRS*, 825 F.2d 225 (9th Cir. 1987).

77. Jerry J. Berman,"National Security vs. Access to Computer Databases:A New Threat to Freedom of Information," *Software Law Journal* ( Winter 1987)(Reprint)

78. Statement of Donald Latham, Assistant Secretary of Defense, *Computer Security Policy:Hearings on NSDD 145 Before the Subcomm. on Transportation, Aviation and Materials of the House Comm. on*

Science and Technology 99th Cong. 1st Sess. ([illegible])

79. Michael Schrage, "U.S. Seeking to Limit Access of Soviets to Computer Data," Washington Post, May 27, 1986, at A 18, col.3.

80. National Telecommunications and Information Security Policy No 2, National Policy on Protection of Sensitive, But Unclassified Information in Federal Government Telecommunications and Automated Information Systems (October 29, 1986)

81. Berman, National Security vs. Access to Computer Databases, 9.

82. Ibid., 6.

83. Public Law 100-235.(1988) (The Computer Security Act of 1987)

84. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

85. Berman, National Security vs. Access to Computer Databases, 11.

86. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

87. For example, by one estimate only 1% of all voluntary organizations were users of on-line information services in 1985. Alan F. Westin, Reference Point Prospectus ( Unpublished September 1987), 27.

88. Public Law 99-499 (1986).

89. 42 U.S.C. Sections 1101-11050 (Supp.1988).

90. Environmental Protection Agency, "EPA Announces New Toxic Chemical Reporting Requirements," Press Release (February 8, 1988)

91. 42 U.S.C. 11023 (Supp. 1988).

92. U.S. Congress, House. Conference Report Superfund Amendments and Reauthorization Act of 1986. 99th Cong. 2nd Sess. Rept. 99-962 (October 3, 1986). 299.

93. Ibid.

94. "The Revolution Ahead: Public Information on Toxic Emissions---CMSA talks with EPA's Charles Elkins," Chemical Times and Trends (January 1988).

95. Ibid., 18.

96. Ibid. , 22.

97. Ibid.

98. Ibid., 22-23.

99. Under the FOIA, 5 U.S.C. 552(a)(6)(A)(i), agencies must reply within 10 working days, but some agencies take longer and others have significant backlogs. Allan Adler, Litigation Under the Federal Freedom of Information Act. 12-13.

100. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know' EPA Journal (November 1987) Elkins gives this example to demonstrate some concerns that the data could cause public alarm and be misleading because the chemical releases in the example may not be unreasonable or cause harm since there is no necessary direct correlation between emission levels and exposure levels. Nevertheless, it is a nice illustration of electronic information and computer analyses.

101. Chemical firms are planning just such use of EPA toxic release data. "Pollution:Trying to Put the Best Face on Bad News: Manufacturers Struggle to Cope with a New Disclosure Law," Business Week (July 18, 1988), 76-77.

102. Environmental Protection Agency, Overview of Requirements for the Toxic Chemical Release Inventory (TRI) ( Prepared by CRS Systems, Inc. November 6, 1987).

103. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

104. 53 Federal Register 7567 (March 9, 1988) announcing public hearing on TRI Database public report on March 30, 1988 at EPA.

105. U.S. House, Report On Electronic Collection and Dissemination., 18-23.

106. Ibid. See also Robert Gellman, "Federal Information Practices," in Special Libraries Association, Government Information:An Endangered Resource of the Electronic Age (Special Libraries Association 1986), 22. "You have to be aggressive in guarding your own interest. You should insist on getting involved in the planning. You have to identify your own needs and how these new electronic systems will affect your operations."

107. Founding organizations of the Working Group include the Advocacy Institute, Citizens Clearinghouse for Hazardous Wastes, Environmental Policy Institute, National Center for Policy Alternatives, National Wildlife Federation, OMB Watch, Public Citizen, and U.S. Public Interest Research Group. The Environmental Defense Fund, Natural Resources Defense Council, and Environmental Action Foundation have also joined.

108. The technical assistance arrangement was worked out with the Public Interest Computer Association and the ACLU Project on Information Technology. See Letter to Jerry Berman ACLU and Denise Vesuvio PICA from Carol Dansereau Environmental Action Foundation On Behalf of the Community Right-to-Know Working Group April 22, 1988

109. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

110. Ibid. Executive Summary. , 2.

111. Ibid. Executive Summary., 3.

112. Ibid. Chapter 2., 2.

113. Ibid. Chapter 2, 1.

114. Ibid. Executive Summary., 4.

115. Ibid. Executive Summary., 4-5.

116. Ibid. Executive Summary., 2.

117. Ibid. Chapter 4., 7.

118. Environmental Protection Agency, EPA/NLM Interagency Agreement: Toxic Release Inventory Public Database (Draft II, June 20, 1988).

119. Elkins Interview in Chemical Times and Trends, 18.

120. Public Report. Executive Summary p.4

121. former footnote 90

122. Report at page _____

123. EPA, Draft EPA/NLM Interagency Agreement., 10.

124. EPA, Public Report. Exhibit 3-2. Chapter 3., 7.

125. The EPA rationale for choosing Tier A may indeed prove more costly. While at one point, the Public Report makes the assumption that user demand is a function of "price," at other points the Public Report suggests that user demand will increase if it is more user-friendly. For example, in weighing fee waiver costs to the government, the Public Report states that those costs will "increase by tier, because usage is expected to increase with improved capabilities." Ibid. Chapter 2., 4. In fact, in estimating costs, the EPA did not take into consideration "usage increases which may result as the result of an expanded user community..." Ibid. Chapter 2., 6. It is therefore possible that by implementing a user-friendly system, system costs to the government could decrease.

126. Elkins, Chemical Times and Trends., 18.

127. 42 U.S.C. Section 11023 states that the database must be "accessible by computer telecommunications...to any person on a cost reimbursable basis." "Any person" must mean that Congress had some kind of user-friendly system in mind. Certainly Congress knows that most citizens cannot use basic computer data and search and retrieval software or statistical software to sort and index data. Nor is it reasonable to assume that Congress added the database requirement so that citizens could "dialup" and access only reports prepared by EPA. The statute states that the database must be accessible by "any person" and not "any person who is a sophisticated computer user." EPA's interpretation of basic requirement of the law appears contrary to congressional intent.

128. See discussion at page ___above.

129. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know'" EPA Journal (November 1987)

130. See Public Interest Computer Association and American Civil Liberties Union, Initial Outline Toxic Release Inventory Database Interagency Agreement (Public Interest Computer Association, Washington D.C. April 26, 1988). The document identifies the range of issues that must be resolved and specified in the interagency agreement between EPA and NLM. EPA and NLM have both expressed the view that this document of system requirements is an excellent basis for serious negotiations. The Environmental Working Group and Chemical Manufacturers have also concurred in this judgement.

131. Environmental Protection Agency, Public Online Access to TRI Data: Discussion of Fee Waiver Criteria (Prepared by Putnam, Hayes & Bartlett, Inc. Washington, D.C.) March 3, 1988

132. OMB, Circular 130. passim.

133. Ibid.

134. According to one study, revenues for on-line data bases amounted to $3.65 billion in 1984 and recent estimates indicate that revenues are growing at an annual rate of 15%. See Berman, National Security vs. Access to Computer Databases, Note 1, 1. OTA, Federal Government Information Technology., 142.

135. U.S. Congress, House Report on Electronic Collection and Dissemination. passim.

136. EPA, Public Report. Chapter 2., 4-5.

137. Ibid. Chapter 3., 8-11.

138. See discussion of unclassified sensitive information at pages _____ above.

139. EPA, Public Report. Chapter 3., 19.

140. Ibid. Chapter 3., 22.

141. Ibid. Chapter 2., 10.

142. Ibid. Chapter 4., 6.

143. Ibid. Chapter 3., 11.

144. Ibid. Executive Summary., 3.

145. Mary Gardner Jones and Nancy Chasen, The Potential of Telecommunications for Nonprofit Organizations (Consumer Interest Research Institute Washington, D.C. 1987)

146. On May 11, the Public Interest Computer Association sponsored a meeting of TCN, BITNET, PEACENET, and other non-profit online providers to discuss how to increase service to the nonprofit community. Memorandum to Participants of the Online Providers Meeting from Denise A Vesuvio, Director, Public Interest Computer Association (PICA: Wash. D.C. May 11, 1988).

147. Reference Point proposes to establish an on-line electronic clearinghouse for non-profit organizations which would provide electronic directories of members; store and disseminate member documents, reports, and alerts; and provide "gateways" to online government and commercial databases. It is in the developmental stages. See Alan F. Westin, Reference Point: A National Computerized Database, Communications Network, and Historical Archive FOr the Non Profit Sector and the Active Citizenry (Prof.

Alan F. Westin 1100 Trafalgar St. Teaneck, N.J. 07666)

148. See Opinion, United States of America v. Western Electric Co. Inc., et.al., Civil Action No.82-0192, slip op.(D.D.C. March 7, 1988).

149. See Frances Seghers, "The $3 Billion Question: Whose Info Is It, Anyway?" Business Week (July 4, 1988), 106-107.

150. U.S. Congress, House, Hearings before a Subcommittee of the Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies. 99th Cong. 1st Sess. April 29, June 26, and October 18, 1985 (Washington: GPO: 1986).

151. 5 U.S.C. § 552a(1) and (2). (1982).

152. See Association of Research Libraries, Technology and U.S. Government Information Policies:Catalysts for New Partnerships (ARL October 1987. The Joint Committee on Printing is circulating a new plan for electronic pilot projects for public comment. See Letter to Members of the Information Community from Rep. Frank Annunzio, Chairman and Wendell H. Ford, Vice Chairman (July 13, 1988) (attaching Dissemination of Information in Electronic Format to Federal Depository Libraries: Proposed Project Descriptions June 1988) The private sector must understand the need to provide electronic databases and products through libraries and the library community has to understand the issues posed by electronic pilots. Since access to electronic information is often the same as disseminating information, a line needs to be drawn to protect electronic publishers from having the libraries become tax-supported publishers of information. While government documents are public and may be copied on a copy machine, this is not the equivalent of electronic "downloading" of data. For example, would a library which has created a database of government documents with an intricate menu system take kindly to a "borrower" asking,not to search the system, but obtain a "copy" of the database so that he or she can mount it on a computer and dispense the information free of charge to anyone who dials up the bulletin board?

153. Statement of Glenn English, Congressional Record, (September 10, 1987) H7415.

AUG 02 1986

Honorable Carl Levin
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

At my hearing before the Senate Committee on Governmental Affairs in June, you requested my response on two issues concerning the Office of Information and Regulatory Affairs' (OIRA) regulatory reviews. First, you asked about the "Additional Procedures Concerning OIRA Reviews Under Executive Order Nos. 12291 and 12498 [Revised]," adopted on June 13, 1986. In particular, you asked about Procedure Nos. 4, 5, and 6, which state:

> 4. OIRA will send EPA copies of all written material concerning EPA rules that OIRA receives from persons who are not employees of the Federal Government.
>
> 5. OIRA will advise EPA of all oral communications concerning EPA's rules, e.g., meetings, telephone calls, that OIRA (i.e., the Administrator and Deputy Administrator) has with persons who are not employees of the Federal government; and
>
> 6. OIRA will invite EPA to all scheduled meetings with such persons concerning EPA's rules.

You noted that, under Procedure No. 7, OIRA had also agreed to apply these procedures to additional agencies, at their request. You further suggested that OIRA should consider having a generic rule applying Procedure Nos. 4, 5, and 6 to all agencies.

As I stated at the hearing, I agree with this suggestion. I am discussing with the Director ways of implementing it, and will be glad to advise you as soon as a decision is made.

Second, as part of a discussion about regulatory review delays, you asked OIRA to identify the five rules under E.O. 12291 review that have been at OIRA the longest. I share your concern about the length of time it takes OIRA to complete its reviews under the Executive order. Let me repeat, on behalf of both the Director and myself, that OIRA is not using, and will not use, delay as a means of forcing agency concurrence with our views.

I have been working since I came to OIRA last summer both to complete our work on old rules and to make sure that newly submitted rules are reviewed expeditiously. For example, last October, not long after I became Administrator, OIRA had 124 rules that had been under review more than 30 days. As of the middle of July 1989, we had 75 such rules, a reduction of 40 percent. Of these 124 rules, we have now acted on 121, or 98 percent, as of this writing.

Now in response to your request for a list of our five oldest rules, as of this writing, these rules are:

(1) Army Corps of Engineers, Processing of Department of the Army Permits, Procedures of the Protection of Historic Properties (received 4/8/88).

(2) Department of Labor, Occupational Exposures to Hazardous Chemicals in Laboratories (received 8/25/88).

(3) Department of Labor, Ionizing Radiation Standards For Underground Metal and Nonmetal Mines (received 9/7/88).

(4) Army Corps of Engineers, Flood Control Cost Sharing Requirements Under the Ability to Pay Provision (received 11/14/88).

(5) Department of Labor, Electrical Safety Standards For Metal and Nonmetal Mines (received 1/6/89).

So that there is no question about full disclosure, on the date you asked the question (the date of the hearing, June 16, 1989), the list included the following:

(1) Department of Energy, Patent Waiver Regulation (received 2/19/87).

(2) Department of Labor, Respiratory Protection (received 5/15/87).

(3) Environmental Protection Agency, Surface Impoundment Clean Closure Guidance (received 11/2/87).

(4) Army Corps of Engineers, Processing of Department of the Army Permits, Procedures of the Protection of Historic Properties (received 4/8/88).

(5) Environmental Protection Agency, Guidance Document - CERCLA Manual on Compliance with Other Laws (received 5/16/88).

You will note that the one remaining item on this latter list is the Corps of Engineers rule, a matter on which we are actively working. We expect to complete our review shortly.

Some reviews do take a considerable amount of time, particularly when agencies take a long time to respond to our questions. However, I can assure you that we are working to improve the timeliness of our reviews, while still meeting our responsibilities under the Executive order.

If you have any further questions regarding OIRA, I would be glad to discuss them with you.

Sincerely,

S. Jay Plager
Administrator
Office of Information
and Regulatory Affairs

cc: Honorable Jeff Bingaman
United States Senator